

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DECUS, INC. and DECUS : CIVIL ACTION

CONSTRUCTION, INC. :

vs. :

MARK HEENAN and HEENAN : NO. 16-CV-5849
HOLDINGS, LLC

PHILADELPHIA, PENNSYLVANIA

January 26, 2018

BEFORE HONORABLE MARK A. KEARNEY, J.
JURY TRIAL

APPEARANCES:

FOR THE PLAINTIFF: OFFIT KURMAN, P.A.
BY: KEVIN B. WATSON, ESQUIRE
KATHRYN E. PETTIT, ESQUIRE
450 Sentry Parkway, Suite 200
Blue Bell, Pennsylvania 19422

FOR THE DEFENDANT: LAVAN LAW
JULIE A. LaVAN, ESQUIRE
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1 (The Court began the proceedings
2 at 9:00 a.m.)

8 More significantly, today, I also want to
9 confirm that because in the Federal Rules you have to
10 get a summons for a Third-Party Complaint. There's no
11 summons issued from the Court. The filing of the
12 third-party claim here was brought as part of an Answer
13 in Counterclaim filed electronically, which is not
14 permitted in this district, and thus no summons was
15 issued.

Even if we were to find counsel's acceptance of it, he could not have accepted a summons, which is what you need to have to begin a lawsuit. So our decision yesterday is absolutely correct, but there's a precursor to it and that is that the claim itself is a nullity against the two individual third-party defendants because this Court lacks jurisdiction over them as there was no summons issued to them. Absent a summons in federal court, you cannot proceed against them.

25 I wanted to amplify the ruling from yesterday.

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1 Secondly, I have had a chance to review the
2 records that Mr. Heenan found, and I'll ask Mr. Watson
3 very briefly as to his position on those records. There
4 are several categories of them that I've broken down.

5 But I'll hear from you, Mr. Watson.

6 MR. WATSON: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. WATSON: You are much more studious
9 than I. I did not have a chance to break it down into
10 categories. What I did notice, though, was that
11 documents that originate from third-parties examples
12 right on the top, Ron Contracting, that we have not had
13 the opportunity to depose and that we would want to
14 depose. These aren't documents that were sent to my
15 client. They were sent to Mark Heenan. We've never
16 seen these, admittedly, and, you know, E-mails to and
17 from individuals like Gary Heenan. I don't even know
18 who Gary Heenan is.

19 There's information in here on a stolen truck.
20 I think I know what it's about, but I don't know what
21 the relevance is. Admittedly, there are documents in
22 here that my clients have and my clients did produce.
23 There were literally over thousands of documents. I
24 wanted to say 10,000 documents, but we have given them a
25 flash drive, and we were able to confirm that some of

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1 these E-mails were, in fact, produced. They weren't
2 marked as exhibits. We didn't want to use them as
3 exhibits, but apparently she didn't either. So the
4 notion that we withheld documents is not accurate.

5 So I would object because I have not had the
6 opportunity to look at these. I have not had the
7 opportunity to depose these individuals, to vet them,
8 and I think for that reason they should not be admitted.
9 It would cause prejudice to my client.

10 THE COURT: Okay. Ms. Lavan, I'll hear
11 from you both as to documents that involve parties,
12 which would be impeachment, and documents that are
13 addressed and they're sent from non-parties.

14 MS. LAVAN: Your Honor, I agree with
15 Mr. Watson about the third parties. However, there are
16 E-mail correspondences in this set of documents that
17 were not produced by their client. There are only a few
18 of them, but they still exist.

19 THE COURT: So let's forget about whether
20 they are produced or not. Let's assume you were on the
21 subway today and you found this on the street, you could
22 use it. It's impeachment.

23 MS. LAVAN: Right.

24 THE COURT: Okay. But my question is a
25 little more significant; and that is a lot of them are

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1 communications written by your client. So you know, for
2 example, an E-mail from your client to one of the
3 principals at Decus is different than a communication
4 written the other way.

5 You understand that?

6 MS. LAVAN: Yes, I do.

7 THE COURT: Okay. Then I think we're okay.

8 MS. LAVAN: Yes, I do.

9 The other thing, Your Honor, is addressing the
10 individuals. My office is writing a motion today on
11 that issue. We believe that we do have the summons, and
12 we do have a waiver from Mr. Watson. And it was our
13 understanding --

14 THE COURT: Where did you get a summons?

15 MS. LAVAN: I had sent it to Mr. Watson.
16 Don't quote me on it. My office is working on it.

17 THE COURT: No, you didn't. I'll tell you
18 why. Go down to the second floor, and you'll see they
19 never issued a summons. It's still there. You have to
20 create one, and you can't create your own summons.

21 MS. LAVAN: Okay. I want to just verify my
22 office is doing that.

23 THE COURT: Okay. Well, check it out.

24 MS. LAVAN: I appreciate that.

25 THE COURT: We checked that out.

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1 MS. LAVAN: Okay.

2 THE COURT: Here's why, Ms. Lavan, I want
3 the record to be clear. When you file an Answer to
4 defenses and some other type of pleading in this Court
5 and you don't call it Third-Party Complaint, nobody
6 catches it. Had you called it a Third-Party Complaint,
7 both my deputy and downstairs would have caught it and
8 then told the Clerk's Office to issue a summons.

9 When you file electronically, that does not
10 happen. The Federal Rules are claims, which are
11 starting against somebody, and always requires a
12 summons. In fact, it goes so far as -- this is curious.
13 I'm just wasting one minute. I'll just give you one
14 highlight of that. Oftentimes, lawyers don't know this,
15 and I didn't know it in practice, that an Amended
16 Complaint that includes a party that still has not been
17 served results in all new summonses. It's interesting.

18 So even assuming that you had amended a couple
19 times to add these people as Third-Party Defendants, you
20 would still have to have a summons. We have no summons
21 issued down below in the Clerk's Office. You can
22 certainly check and if I'm wrong and you have something,
23 I am certainly willing to consider your motion. We
24 checked, and we had nothing.

25 So other than that, Mr. Watson, are you ready

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1 to continue with your witness?

2 MR. WATSON: I am, Your Honor.

3 THE COURT: All right.

4 Sir, did you follow my instructions from
5 yesterday concerning not speaking to anyone regarding
6 this case?

7 THE WITNESS: I did.

8 THOMAS ALOIA, was duly sworn.

9 (The jury entered the courtroom at
10 9:05 a.m.)

11 THE COURT: You may remember, ladies and
12 gentlemen, that we are back to the plaintiff's case.
13 The plaintiff, of course, being Decus, Inc. and Decus
14 Construction. We are in the direct examination of one
15 of its members.

16 I'm not characterizing what your role was, sir,
17 but you certainly were involved in Decus Construction.

18 Mr. Watson, you may proceed.

19 MR. WATSON: Thank you, Your Honor. Two
20 seconds, please.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. WATSON:

23 Q. Good morning, Mr. Aloia.

24 I wanted to just revisit some of the issues
25 that we had touched upon yesterday. This is Exhibit 41.

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1 BY MR. WATSON:

2 Q. Can you turn to Exhibit 41? Can you identify
3 this for the record, sir? Have you ever seen this
4 before?

5 A. I have seen this document.

6 Q. In what context did you see this?

7 A. This appears to be one of the documents that
8 Mark had supplied us with during this litigation.

9 Q. So you did not see it when you were dealing
10 with Mark, but you saw it after you were dealing with
11 Mark, correct?

12 A. Correct.

13 Q. What is this document apparently in your
14 estimation?

15 A. This is a Partial Release of Liens, which is a
16 document that is used in construction. Usually, prior
17 to a payment a contractor signs a Release of Liens for
18 the owner, so that they are not going to place a lien
19 against the property. It's usually conditional upon
20 payment, and that's what this is.

21 This is a Partial Release of Liens for the
22 Gloucester Data Center in the amount of \$7,058. It's
23 signed by Mark Heenan, listed as a principal, and it has
24 the Decus mark on it.

25 Q. All right. That's what I want to focus on,

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1 the Decus mark.

2 Is that the design that you had created?

3 A. Correct, with Speakeasy and Avery Blue.

4 Q. The date of this is January 31st, 2016.

5 Was he still employed with you at this point?

6 A. Yes.

7 Q. Was he authorized then to provide this payout
8 to a third party? Was he authorized to provide this?

9 A. Well, this is interesting. It's a Partial
10 Release of Liens from Decus Construction. It's dated
11 1-31-16 on a project with an owner that Decus
12 Construction did not contract with. Decus, Inc.
13 contracted with this owner, and then it's signed on
14 4-8-16.

15 The difference in the dates is actually
16 interesting as well because in January of '16, Mark did
17 not own the dba, Decus Construction. It wasn't until
18 March 11th that he filed that paperwork with the State
19 of New Jersey, and then this is signed a month after
20 that.

21 Q. Okay. Go to 56, if you will, sir. Flip back
22 very quickly to 41.

23 Is that Mark Heenan's signature on that?

24 MR. WATSON: I apologize to everybody.

25 THE WITNESS: That is Mark Heenan's

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1 signature.

2 BY MR. WATSON:

3 Q. All right. Thank you so much, sir. Let's go
4 to 56.

5 Just identify that for the record, if you will.

6 A. This is another partial Release of Liens. It's
7 for the period of 3-30-16. It's for \$965. It's
8 undersigned on 6-1-16. The issue with these beyond the
9 fact that he signed it, used Decus mark, has the wrong
10 entity as the contractor, these amounts don't line up to
11 any of the payment applications.

12 Q. Is this Mr. Heenan's signature?

13 A. It is, yes.

14 Q. Go to Exhibit 73. I want you to turn to
15 Page 15.

16 What is this document, sir?

17 A. This is a contract for Decus, South Jersey CML.
18 This is a subcontract agreement with Neco Construction.

19 Q. When did you first see this?

20 A. I'm just seeing this. I believe this is the
21 first time I've actually seen this contract.

22 Q. It has your company on it?

23 A. It does.

24 Q. That's your trademark?

25 A. That is, and that's my office address.

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1 THE COURT: So when you say "your," be
2 careful.

3 Is it your trademark?

4 MR. WATSON: I apologize.

5 THE WITNESS: It's the company's trademark.

6 THE COURT: Which company?

7 THE WITNESS: The mark for Decus, Inc. and
8 Decus Construction, Inc.

9 BY MR. WATSON:

10 Q. Page 819 of 22.

11 Whose name is on this?

12 A. Mark Heenan.

13 Q. Okay.

14 A. It's listed as a principal.

15 Q. Was that accurate? Was he a principal in
16 Decus Construction?

17 A. No.

18 Q. The date on this is August 2nd, 2016,
19 correct?

20 A. Correct.

21 Q. So he was working for your company, correct?

22 A. Yes.

23 Q. But you only saw this today?

24 A. Correct.

25 Q. Was that something that you would have seen

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1 in your position as an officer for Decus?

2 A. These were documents in our meeting, and I
3 memorialized it all in an E-mail in late August where
4 John and I had growing concerns of who the
5 subcontractors were and what liabilities would exist
6 with our company because we weren't getting
7 documentation from Mark. He kept promising that he
8 would send it to us, but he did not.

9 Q. All right. Now, we don't need to show the
10 jury, but I'm just going to flip through and make
11 sure this exhibit is noted for the record.

12 Page 826, are you there?

13 A. I am, yes.

14 Q. That's another subcontract between South
15 Jersey CML? That's the right company, correct, not
16 the fake one that he set up?

17 A. That's South Jersey. That's the owner. It's
18 not listing him as the owner. It's listing it as the
19 project.

20 Q. The project.

21 A. Yes.

22 Q. Okay, you're right. I apologize.

23 And that is dated August 2nd, 2016, again,
24 Decus mark is on that.

25 Have you seen that before today?

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1 A. I don't believe I have.

2 Q. Mr. Heenan signs that on Page 830, at least
3 there's a spot for his signature. 834, in the same
4 Exhibit, Page 834, contract with Decus and Four
5 Quarters.

6 Have you seen this before today?

7 A. I have actually gotten invoices from these
8 individuals, but I did not have a contract to back it up
9 with. Four Quarters, when we contacted them, they may
10 have sent us a copy of the contract. So I may have seen
11 a copy of this unsigned contract.

12 Q. Decus 884. We're still on the same exhibit.

13 It's 881. The Bates label is DECUS84.

14 What is this document, sir?

15 A. This is a Request for a Bid Proposal for the
16 Sommerdale Dunkin' Donuts.

17 Q. Had you ever seen this before?

18 A. Actually, this document was posted on our
19 website. We pulled this down after we had met with Mark
20 mainly not because we had a signed contract on this
21 project, but when we looked at it, all the information
22 is correct as far as our mark, it has the project, it
23 has the dates, architect, building size.

24 The interesting thing here was that underneath
25 our Decus office address and our website is Mark's phone

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1 number listed as the telephone number and Mark's fax
2 number listed as the fax number.

3 Q. Was that authorized?

4 A. That was not.

5 Q. Why did you take it down?

6 A. Because it was an inaccurate document. When we
7 asked Mark about it, he said he had set it up as the
8 estimating department, and he was just doing it to help
9 create estimates. But the issue there is that John does
10 the estimates and oversees all estimates and oversees
11 proposals. When we asked where the proposals were for
12 this job, he didn't have any.

13 Q. Go to 78, sir. I apologize for jumping back
14 and forth.

15 THE COURT: Page 78 or Exhibit 78?

16 MR. WATSON: Exhibit 78. I apologize.

17 BY MR. WATSON:

18 Q. What is this document, Mr. Aloia?

19 A. This is an E-mail correspondence from
20 Mark Heenan to Dan Geiger, which is from Rome
21 Technology. Rome Technology is the website designer
22 that we contracted with.

23 Q. Okay. It looks like here Mr. Heenan is
24 writing to Dan Geiger. He's your website master?

25 A. He's a website designer.

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1 Q. The designer.

2 Was Mark authorized to communicate with
3 Mr. Geiger?

4 A. He was. I mean, Mark had helped him design the
5 Decus website, which included content. Dan just
6 designed it, the overall different color schemes, the
7 pantone colors from our logo and duplicates it to create
8 an overall, I guess, appealing design to the viewers.

9 The content and pictures we have to give them,
10 and that's what Mark was doing. He was giving them the
11 content and the pictures.

12 Q. This E-mail, what is this dated?

13 A. August 18th.

14 Q. Okay. August 18th of 2016, and he's still
15 working for you obviously.

16 He writes to Dan and says, "From what I've
17 read, it's fairly simple to clone the Decus, Inc. site
18 and to another domain name. I have purchased
19 DecusConstruction.com."

20 Mr. Heenan has purchased it, correct?

21 A. Correct.

22 Q. "And was wondering if you could clone the
23 existing site and content to that site. I think it
24 would be best if we do that, then have Decus, Inc.
25 point to it, right? Decus, Inc.'s website to point

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1 to the clone, right? From what I've read, it's the
2 same process as backing up the existing site or
3 downloading to edit and then repossessing. Take a
4 look when you have a moment and let me know."

5 What did you take from that? Well, let's start
6 with this.

7 Did you receive this E-mail?

8 A. I did not.

9 Q. How did you find this E-mail?

10 A. Actually, the way we got the E-mails from Mark
11 is after we had completely severed ties with him, we
12 logged on to his company E-mail address and everything
13 had been deleted, every E-mail, every correspondence.

14 We contacted Microsoft, and it took probably
15 two days to retrieve whatever E-mails they could
16 possibly retrieve that weren't permanently deleted
17 beyond -- I think it was like a 60-day period. We were
18 able to retrieve almost 2,200 E-mails, and this was one
19 of them that we found.

20 Q. Would you have expected this E-mail to at
21 least be copied to you or authorized by you before it
22 went out?

23 A. Yes. I actually went back to Dan Geiger and
24 questioned him about it. Again, I don't know Thomas. I
25 just didn't think anything of it until this was going

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1 on. I explained it to him, and that's when we had to
2 cut Mark's access off to the website as well.

3 Q. This is Dan's response. "It's not difficult,
4 but you have E-mail going through DecusInc.com, so I
5 assume you want to maintain the account. Can you
6 give me access to DecusConstruction.com, so I can
7 point to our servers and set up the account?"

8 Was Dan Geiger allowed access to Decus
9 Construction -- well, DecusInc.com?

10 A. Yes, Decus, Inc., yes.

11 Q. But this is Mark's website, so he was asking
12 for access to Mark's website?

13 A. He was, yes.

14 Q. Okay. Thank you.

15 A. I just need to correct it. It's a domain name.

16 Q. Domain name. I apologize.

17 What is BuildZoom.com?

18 A. BuildZoom is a service. I think it's similar to
19 Angie's List. It's more oriented toward commercial
20 construction. It gives the company bio. It rates the
21 contractor. It allows you to post some pictures,
22 includes some basic information.

23 It also has a service where it picks up
24 building permits, and it just lists them in the bottom
25 portion of it, though, of what the company is doing and

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1 if it's active and if their license is current.

2 Q. A marketing website?

3 A. It's a marketing website.

4 Q. A site that directs business to you, correct,
5 to mine business?

6 A. It doesn't direct it to us. It's just another
7 outlet for interested clients to gather information on
8 us.

9 Q. Was Mark Heenan authorized to work with
10 BuildZoom?

11 A. We would have permitted Mark to work with
12 BuildZoom for company business and with company
13 information.

14 Q. What document is this?

15 A. This is 106.

16 Q. Can you turn to 106, sir?

17 THE COURT: That's Exhibit 106 as opposed
18 to Page 106?

19 MR. WATSON: Yes, Exhibit 106.

20 THE COURT: Thank you.

21 BY MR. WATSON:

22 Q. What is this document, sir?

23 MS. LAVAN: What Exhibit, I'm sorry?

24 MR. WATSON: We're at Exhibit 106.

25 THE WITNESS: This is a printout of the

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1 BuildZoom site on August 19th, 2016 for Decus, Inc.

2 BY MR. WATSON:

3 Q. Is it October or August, sir?

4 A. The printout was October 19th. It's on the top
5 of the page.

6 Q. Where are you getting the August?

7 A. October?

8 Q. Oh, it is October. Okay. I thought you said
9 August.

10 Who printed this out?

11 A. I believe I did.

12 Q. And why?

13 A. At this point we were trying to figure out what
14 was out there, what our liabilities were and we were
15 kind of combing the Web to see what information we could
16 find out that Mark had attached himself to our company.

17 Q. This is after the August 26th Café meeting,
18 after things essentially hit the wall, correct?

19 A. Correct.

20 Q. Okay. What did you find?

21 A. Well, this printout has our Decus, Inc.
22 information.

23 Q. If you go to Page 1324 in the upper
24 right-hand corner, I think you'll see what you're
25 looking for.

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1 Do you see that, Mr. Aloia? I gave you the
2 page number, 1324, upper right-hand corner.

3 A. 1325 has Mark Heenan.

4 Q. Let's start on 1324.

5 Do you see it says "Decus, Inc. team"?

6 A. Oh, yes.

7 Q. So the website, as you're scrolling down,
8 identifies the Decus, Inc. team. Then the next page
9 in that is the next scroll.

10 What does it say?

11 A. Mark Heenan is the only team member, and he's
12 the owner.

13 Q. Right. "Mark Heenan, owner."

14 Was he the owner?

15 A. He was not.

16 Q. Was he authorized to post that?

17 A. He was not.

18 Q. Did you confront him about that?

19 A. At this point, we had very limited
20 correspondence with Mark.

21 Q. Turn to Exhibit 38. Disregard that. I
22 apologize, Joint Trial Exhibit 40.

23 MR. WATSON: I promise to get one more cup
24 of coffee at the break, Your Honor.

25

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1 BY MR. WATSON:

2 Q. Can you identify Exhibit 40 for the record,
3 please?

4 A. This is an Application for Payment, Gloucester
5 Data Center LLC.

6 Q. Explain to the jury what an Application for
7 Payment is.

8 A. Application for Payment. It's a standard form.
9 It's through the AA documents. It's virtually an
10 invoice. It's specific to construction projects.

11 Q. Who would give it to whom?

12 A. It could come from a subcontractor to a
13 contractor, contractor to owner. There are actually a
14 couple checklists on it. It could be from virtually
15 anyone to be paid.

16 Q. Essentially, an invoice signed by the
17 contractors to the owners saying, "I want payment"?

18 A. Correct.

19 Q. Have you seen this payout before today?

20 A. I have.

21 Q. In what context did you see this payout
22 application?

23 A. I've seen this multiple times.

24 Q. Okay. When did you first see it, what
25 context?

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1 A. I believe we first saw this in April.

2 Q. Okay. Of 2016?

3 A. Of 2016.

4 Q. At this point, he's signing a pay application
5 on your behalf?

6 A. He is.

7 Q. Was he authorized?

8 A. He was not.

9 Q. When you saw that his signature was on it and
10 he was not authorized, what did you do?

11 A. The problem with this is, I mean, all he's
12 certifying is to the best of his knowledge that the work
13 is complete.

14 Q. Right.

15 A. The issue we have is we haven't reviewed it.
16 The worst thing you can do to an owner is overbill them.
17 The worse thing you can do to a company is underbill
18 them. So we would have liked to have had a chance to
19 review it prior to sending it out.

20 Q. Well, all right. That's one of them.

21 Let's turn to the page after that, Page 625.
22 If you could go to that.

23 Is this another Pay Application?

24 A. It is, yes.

25 Q. How much money is he asking to be paid to

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1 Decus at this point?

2 A. The current payment due is \$8,023.

3 Q. Okay. I just want to point this out to the
4 jury, so they can see.

5 This line here, it's Line 7, and the payout --
6 well, I'm sorry, what payout? Yes, payment?

7 A. Number 8.

8 Q. Yes, thanks.

9 Line 8 is \$7,058, correct?

10 A. No.

11 Q. Line 8 is \$8,023, correct?

12 A. Correct.

13 Q. So that's the amount due?

14 A. That's the amount due. But again, the issue
15 with this Payment Application and the previous one, the
16 contracting agency is Decus, Inc. not Decus Construction
17 or Decus Construction, Inc.

18 Q. He's got Decus Construction, correct?

19 A. Correct.

20 Q. What is the concern with that?

21 A. Well, our legal entity is Decus Construction,
22 Inc., and prior to all this litigation I don't think we
23 would have thought anything of it as Decus Construction,
24 but for this contract it was Decus Construction, Inc. so
25 the payment should have been going to the contracting

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1 party, which is Decus, Inc.

2 Q. Okay. Are the rest of the documents in that
3 exhibit also Pay Applications signed by Mr. Heenan
4 for payment on that project to Decus Construction?

5 A. Yes.

6 Q. Okay. You saw those for the first time after
7 they were submitted to the owner, correct?

8 A. Correct.

9 Q. You confronted him and said what?

10 A. "Where's the money?"

11 Q. "Where's the money?"

12 A. Yes.

13 Q. What was his answer?

14 A. That Alex was a little slow on payments, but he
15 was working on it.

16 Q. Go to Exhibit 80, sir.

17 Can you identify this document for the record?

18 A. This is a Project Status Report for the Camden
19 Diocese Phase I Project. It was updated on August 29th,
20 2016.

21 Q. And within this one, from Page 1145 to
22 Page 1150, there's a series of Project Status
23 Reports, correct?

24 A. Correct.

25 Q. Can you just explain to the jury what these

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1 documents are?

2 A. This was following our August 26th meeting with
3 Mark Heenan. One of the issues we had was we had no
4 information on the projects that we were supposed to be
5 contracted with. Mark said he'd gather all that
6 information and give us reports. These are the
7 reports --

8 Q. Give me the time frame.

9 A. This is following our 8-26-16 meeting.

10 Q. Following the August 26th meeting in the Café
11 when everything broke?

12 A. Correct. So he updated it apparently on 8-29.
13 I believe he handed it to us several days later. This
14 report was to give us the summary on the overall
15 project, give us the estimated amount, the cost. Mark
16 also included a note summarizing what we would have been
17 paid on these projects. Some were walk-away figures.

18 This was sort of a last-ditch effort for Mark
19 to stay with us and to show us that he had some
20 profitable projects coming in for us, and that we could
21 move forward on these projects at any time.

22 Q. Was it his estimation of what the actual
23 profit was on these projects?

24 A. He had a note attached to this that summarized
25 that.

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1 Q. Okay. We'll get to that. Let's talk about
2 this particular project.

3 This is the Camden Diocese project, right?

4 A. Phase I, correct.

5 Q. Phase I.

6 What did you know about this?

7 A. We would get bits and pieces from Mark. Mostly,
8 he would tell us that he was going in for permits, that
9 we were going to start moving on these projects. Really
10 not much.

11 Q. Okay.

12 A. This is the first time that we actually got
13 something of substance, and we had a better idea of what
14 these projects actually were.

15 Q. Let's go to the next project report, Camden
16 Diocese Phase II.

17 Again, another job that Mark was to bring to
18 you, and you were to receive money for that, correct?

19 A. Correct.

20 Q. Estimated contract amount, estimated direct
21 cost, correct?

22 A. Correct. It has a date start of November.

23 Q. November of 2016?

24 A. I would assume so. It doesn't identify it, but
25 I assume it is.

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1 Q. It says, "PPAs in progress with owners."

2 What does that mean? Power Project Agreements?

3 A. Probably. He sent us some of those agreements
4 earlier on, but they were just blank.

5 Q. Next project, Project Status Report,

6 Washington Township Solar, Update. This update date
7 is August 29th, 2016.

8 Again, what did you know about this project?

9 A. This project originally was -- I don't believe
10 was under Alex Lemus, but Alex Lemus is the owner of
11 Gloucester. At this point, we hadn't been paid much of
12 anything from Alex. We were not very certain that Alex
13 was going to get the funding.

14 This project, Mark had identified that it was
15 going on since 2011, but he claimed that the contract
16 was executed with a \$300,000 termination. It was a
17 walk-away figure, and that two things: One, we don't
18 have a copy of the executed contract. That's our
19 biggest issue with this.

20 Q. Why not?

21 A. Because if Mark signed another contract and it
22 has terms and conditions that we didn't agree to, we
23 would want to know. There's also a \$300,000
24 termination-for-convenience clause, which it's a large
25 sum of money for just a walk-away figure.

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1 Q. You need to baby step that for the jury.

2 What is a termination for convenience, and what
3 is a walk-away figure?

4 A. Termination for convenience in construction is
5 typically where an owner doesn't terminate for cause.
6 They terminate for convenience. When they terminate for
7 convenience, there's recovery.

8 In this case, it's identified that that will be
9 maxed out at \$300,000. So if this owner is unable to
10 fulfill the contract on an executed contract, they would
11 pay \$300,000 at a minimum.

12 Q. Next project.

13 A. The \$300,000 was a question that John and I had
14 because we wanted to know who was the payee.

15 Q. Right. It could have been?

16 A. Mark Heenan, Decus Construction of New Jersey.

17 Q. Next project, please.

18 This is the Gloucester Solar, I believe
19 Mr. Heenan testified to; do you recall that?

20 A. Yes.

21 Q. What did you know about this project?

22 A. We had some more information on this project
23 just because it's an adjacent property to the Gloucester
24 Data Center. There were some preliminary designs done
25 on it, but it was an open contract. It was much like

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1 the data center. There was no financing.

2 Q. When you received these project status
3 reports -- South Jersey CML, Phase III. We talked
4 about a South Jersey CML, I guess, Phase I and II?

5 A. Correct.

6 Q. Walk us through the phases, just so we
7 understand.

8 A. Well, the first phase is the phase that Decus
9 Construction, Inc. had a contract with Southern New
10 Jersey, who was not the owner. It's South Jersey.

11 Q. Right. We talked about that yesterday. That
12 was the --

13 A. It's just an expansion of their existing
14 facility.

15 Q. We talked about the difference between South
16 Jersey and southern Jersey.

17 A. We did, yes. South Jersey is the actual owner
18 of the entity, and Southern Jersey, CML is just another
19 company that Mark Heenan had created.

20 Q. Go ahead. So the difference between the
21 three phases?

22 A. There's one phase that we had drawings for. We
23 did not receive the drawings for Phase II or Phase III.

24 Q. Explain what the three phases were.

25 A. I couldn't tell you without seeing the scope of

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1 work.

2 Q. Was one design one construction?

3 A. No, they are three separate construction
4 projects.

5 Q. I see. Next project, please. Trenton CML.

6 Mr. Heenan had talked about this in his testimony.

7 What did you know about this project?

8 A. Trenton CML was the larger project that we were
9 looking at for that same group. It was in Trenton. It
10 was probably going to be at the prevailing rate. They
11 were working on some grants. It was estimated to be, I
12 think, originally five or 6 million.

13 At this point, it's now looking like it's
14 grown. No contract in place, just proposal only.
15 There's not a lot of detail here.

16 Q. Next one, please. Turn to Exhibit 20, if you
17 will, sir. The very last page, which is 504. We've
18 flipped this, just so that we can read it.

19 Do you know what this document is, or what this
20 photograph is, I should say? What is this?

21 A. That's a picture of the Post-it note that Mark
22 had attached to the front of those status reports.

23 Q. That we've just talked about.

24 A. And he gave us a summary of what each project's
25 profits were going to be.

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1 Q. This is his handwriting?

2 A. That is.

3 Q. And so CP1 was what?

4 A. Assuming that's Camden Phase I, Camden Phase II.

5 Q. Okay. He anticipated a gross profit of what?

6 A. \$401,000.

7 Q. CP2, anticipated a gross profit by Mr. Heenan
8 of what?

9 A. About 1.19 million.

10 Q. Is that a 9 or a 4?

11 A. Hard to tell.

12 Q. Okay. Next project?

13 A. Washington Township. That's 1.5 million.

14 Q. Next project?

15 A. Gloucester Solar, 700,000.

16 Q. Next project?

17 A. CNL Trenton, 695,000.

18 Q. Next project?

19 A. South Jersey Phase III, 50,000.

20 Q. For a grand total of?

21 A. \$4.486 million.

22 Q. Of gross profit?

23 A. Gross profit.

24 Q. Do you know what these two numbers are?

25 A. Those are the walk-away figures, but they are

1 slightly changed. It looks like \$680,000 total, I
2 think.

3 Q. So again, the termination for convenience, if
4 we just walked away from all these jobs, that's the
5 check you would have gotten, 680,000?

6 A. Correct.

7 Q. Did you become aware of Mr. Heenan
8 communicating to third parties about your company?
9 And just answer that question.

10 A. We did, yes.

11 Q. What did you understand those communications
12 to be? Give me a time frame.

13 A. Time frame, Mark had communications with some of
14 these owners almost from the onset of the projects.

15 MS. LAVAN: Objection to the extent this is
16 going to lead to hearsay, Your Honor.

17 THE COURT: Well, the question itself is
18 not yet.

19 Sir, obviously, you don't tell us what somebody
20 else told you.

21 THE WITNESS: Right.

22 BY MR. WATSON:

23 Q. We're concerned about what Mark was telling
24 the owners, okay? You can testify to that.

25 THE COURT: As long as Mark told you.

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1 THE WITNESS: Yes.

2 MR. WATSON: Yes.

3 THE WITNESS: Mark had started off by
4 saying that he was joining a new company, and he had
5 left Hessert. He had talked up the company to his
6 clients. As things progressed, Mark tried to turn the
7 tables, although he basically was riding the coattails
8 of Decus and actually wrote an E-mail to all the
9 clients. He also CC'd some other people that I'm not
10 sure who they are, and he claimed that Decus was
11 insolvent, couldn't build anything.

12 MS. LAVAN: Objection. Is this hearsay?

13 THE WITNESS: No, it's in writing.

14 THE COURT: That doesn't matter. It has to
15 do with what Mark told you, not that somebody told him
16 that.

17 THE WITNESS: He wrote me the E-mail.

18 THE COURT: Counsel, you need get to get
19 statement.

20 BY MR. WATSON:

21 Q. Did you receive an E-mail from Mark Heenan?

22 A. Yes.

23 Q. When did you receive that E-mail?

24 A. I believe that was in October of 2016.

25 Q. What did the E-mail say to you?

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1 THE COURT: From Mark?

2 BY MR. WATSON:

3 Q. From Mark.

4 A. That the company was insolvent. He identified
5 my personal bankruptcy, and he went through a whole slew
6 of different things. I think one pertains to your firm.
7 He stated that we wouldn't build anything, stated that
8 we were riding his coattails, not the other way around.

9 And without seeing the E-mail in front of me --

10 Q. Well, let's start with was your company
11 insolvent?

12 A. No.

13 Q. Was it ever insolvent?

14 A. No.

15 Q. Is it insolvent today?

16 A. No.

17 Q. What impact did that have on your business?

18 A. There were a number of things happening at that
19 point. That impact with that group of people, it was
20 devastating. Everyone banks and they have friends
21 and --

22 Q. "At that point," being what period, the
23 calendar time?

24 A. October, November.

25 Q. Okay. Go ahead. Of '16?

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1 A. Of '16. Everybody talks. The construction
2 industry is a large industry, and everybody hears it.
3 Now, coupled with subcontractors that are contacting our
4 office saying that they haven't been paid.

5 MS. LAVAN: Objection, hearsay.

6 THE COURT: Well, sir, rephrase it so you
7 can get it as possibly an exception.

8 BY MR. WATSON:

9 Q. Have you received communications from
10 subcontractors or invoices from subcontractors
11 seeking payment for work that Mark Heenan authorized?

12 A. Yes.

13 Q. And do you have the money to pay them?

14 A. We never received it.

15 Q. So the impact on your company, other than
16 what you testified to?

17 A. So the impact now is that there's a story that
18 Mark is spreading. There are subcontractors coming to
19 us looking for payment. It's kind of putting a story
20 together that we don't pay our bills for entities that
21 Mark contracted with on our behalf and then took the
22 money and ran away. So he's creating a cloud over our
23 company.

24 Q. Do you think that was an oversight on his
25 part, or was it intentional?

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1 A. It was intentional.

2 Q. Has Mark Heenan damaged your company?

3 A. Yes.

4 Q. Have you had a chance to quantify those
5 damages?

6 A. We put a damage summary together, yes.

7 Q. Is this that summary?

8 A. Yes.

9 Q. Let's walk through this.

10 Funds misappropriated for the Gloucester
11 project, what is this number? It says \$128,137.

12 Where do you get that from?

13 A. That's the balance of the contract.

14 Q. Meaning?

15 A. The balance of the contract that Decus, Inc.
16 helped with the owner.

17 Q. Okay. Money that Mark received that didn't
18 pay you?

19 A. We haven't seen any documentation that Mark
20 received that money, nor did we receive any information
21 that he paid it out. So we filed a lien against the
22 property.

23 Q. Has the work been performed 100 percent?

24 A. Yes.

25 Q. Who performed the work?

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1 A. Mark was involved in it.

2 Q. Which company?

3 A. Decus, Inc.

4 Q. Your company?

5 A. Correct.

6 Q. Is your company entitled to that money?

7 A. We are.

8 Q. Why are you not being paid that by the owner?

9 A. We had correspondence with him, and we have not
10 gotten an answer.

11 Q. Do you think Mark is the reason why you are
12 not being paid?

13 A. He had stated that he paid Mark already, and
14 this was a situation that he had been in once before
15 with Mark.

16 Q. Funds misappropriated for the CML Project,
17 134,570; is that correct?

18 A. That's the balance. We deducted from the base
19 contract 187,000, the 53 that Mark had paid.

20 Q. So 187,000 was the total that was paid to
21 Mark?

22 A. Correct.

23 Q. We heard him talk about that yesterday.

24 A. He admitted that, do you remember that?

25 A. Yes.

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1 Q. He said he had actually been paid more,
2 correct?

3 A. Correct.

4 Q. Then you deducted the 53 that he pulled out
5 of his pocket on August 26th, and that's the number,
6 correct?

7 A. Correct.

8 Q. Okay. Anticipated profit on the Camden
9 Diocese Phase I, that's the \$401,000 number.

10 Can you explain that?

11 A. The left column for all of those projects are
12 the numbers that Mark identified as gross profits, and
13 the right is 20 percent.

14 MR. WATSON: I'm sorry, Your Honor. That
15 had some things on there that probably the jury
16 shouldn't see.

17 MS. LAVAN: Your Honor, the problem with
18 that is that's not one of our joint exhibits.

19 THE COURT: Well, it's a summary, but it
20 has to be taken down. It's taken down, and you have
21 objections waived as being untimely. It can't go back
22 up. If you see it go back up, tell me next time.

23 MR. WATSON: All right. May I approach the
24 witness, Your Honor?

25 THE COURT: Yes.

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1 MS. LAVAN: I'm going to place an objection
2 to this, Your Honor. I had specifically asked --

3 THE COURT: He's not doing anything yet.
4 He's just showing it to the witness. You can only
5 object to a question.

6 Let's hear the question.

7 MR. WATSON: Your Honor, I have a copy for
8 you.

9 THE COURT: Thank you.

10 BY MR. WATSON:

11 Q. Those were the profits that we had talked
12 about on the Post-it, correct?

13 A. Correct.

14 Q. That total, did you take out anything to
15 credit Mark for that?

16 A. We set aside out of those gross profits
17 20 percent.

18 MS. LAVAN: Your Honor, I have to object to
19 this. This document was not produced as a Joint
20 Exhibit.

21 THE COURT: It's not an exhibit.

22 MS. LAVAN: But he's referencing it.

23 THE COURT: Yes. It's a summary of what
24 his Post-it note says.

25 Overruled.

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1 MS. LAVAN: Can't he refer to the Post-it
2 note instead?

3 THE COURT: This jury is not going to see
4 this document, ma'am. It's not an exhibit. Fair
5 question, but this is not an Exhibit. This is to help
6 the witness, I guess, and Mr. Watson understand the
7 testimony, but it's not going to go to the jury.

8 MR. WATSON: We'll go back to the Post-it
9 note.

10 THE COURT: Thank you.

11 BY MR. WATSON:

12 Q. So you think your company is entitled to this
13 \$4.486 million profit on these jobs, correct?

14 A. Anticipated gross profits for projects that we
15 were receiving from Mark Heenan, yes.

16 Q. Explain that.

17 By the way, this was under the consulting
18 agreement, correct?

19 A. Correct.

20 Q. Would he be entitled to a commission?

21 A. 20 percent.

22 Q. Okay. So 20 percent of this 4.86 29
23 \$3 million number should go to Mark, right,
24 20 percent? And then you get the rest.

25 So the net-net would be this less 20 percent,

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1 correct?

2 A. Correct.

3 Q. Why are you entitled to that money?

4 A. Mark was our business development consultant,
5 and he was using our name and our work to get this,
6 these projects. It wasn't until the very end where Mark
7 was able to create a story and take all that work and
8 basically leave John and I in a bad light with these
9 clients, similar to what he tried to do with his uncle
10 and take the contracts for himself.

11 MS. LAVAN: Objection. Objection, hearsay.

12 THE COURT: Sir, only speak about what you
13 know from what Mark told you from your own knowledge.
14 You can't tell us what somebody else told you.

15 THE WITNESS: Okay.

16 THE COURT: Sustained to that extent.

17 BY MR. WATSON:

18 Q. Do you believe this is an accurate
19 representation of what Mark Heenan owes you for what
20 he has done to your company?

21 A. Lost profits, yes.

22 Q. How has this impacted your company in
23 general, his actions?

24 A. It was a significant amount of work that we were
25 relying on, and that was our focus for business

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1 development, these projects. Mark was our business
2 development leads, and those were the leads we were
3 going after. As he stated yesterday on testimony, John
4 and I weren't doing business development. We were
5 relying on him.

6 MR. WATSON: No further questions, Your
7 Honor.

8 THE COURT: Thank you, counsel.

9 Ms. Lavan, do you wish to cross-examine?

10 MS. LAVAN: Yes, Your Honor.

11 THE COURT: Please.

12 CROSS-EXAMINATION

13 BY MS. LAVAN:

14 Q. Mr. Aloia, you testified yesterday that John
15 Sciotto started Decus, Inc. in approximately 2013; is
16 that correct?

17 A. Correct.

18 Q. And that you had joined Decus in 2015,
19 correct?

20 A. Yes.

21 Q. But prior to joining Decus, Inc., you
22 testified that you vetted John Sciotto and Decus
23 prior to joining that business; is that correct?

24 A. Correct.

25 Q. Part of that vetting was you had consulted

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1 with a judge or a former judge and asked his advice,
2 correct?

3 A. A mentor.

4 Q. A mentor who was a judge, right?

5 A. He was acting not in a judge role. He was
6 acting as a mentor.

7 Q. But you had to tell the jury how it was a
8 judge yesterday, correct?

9 A. I used the term "judge" because he is a judge.

10 Q. And --

11 A. Retired judge.

12 Q. -- did you consult with that retired judge
13 when you filed your bankruptcy?

14 A. I did not. He can't advise me legally.

15 Q. So it was important before you joined Decus,
16 but it wasn't important to consult with him when you
17 were filing for personal bankruptcy because you
18 couldn't pay all the suppliers and vendors that you
19 owed; is that correct?

20 A. It wasn't his place for me to involve him. I
21 had an attorney.

22 Q. But it was his place to advise you before you
23 joined Decus, correct?

24 A. I asked him if he would evaluate it as a mentor.
25 He has been a great help to me.

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1 Q. He did evaluate it, correct?

2 A. He didn't evaluate the company. He evaluated
3 what he had seen and what he had heard from John
4 Sciutto.

5 Q. And so did he talk to John Sciutto?

6 A. He did.

7 Q. I think you testified yesterday that you also
8 talked to some of John's previous business partners;
9 is that correct?

10 A. I did not at that point.

11 Q. Maybe you testified you called some
12 references?

13 A. No.

14 Q. But somebody was out asking about John
15 Sciutto in some capacity?

16 MR. WATSON: Excuse me, John Sciutto?

17 THE WITNESS: Not that I recall.

18 BY MS. LAVAN:

19 Q. You vetted John Sciutto and Decus before you
20 joined the company to the extent that you advised
21 with a judge, but prior to Mr. Heenan joining Decus,
22 you never even met with him; is that correct?

23 A. That is not correct.

24 Q. In October of 2015, you had never met with
25 Mark Heenan.

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1 A. In October, I did not meet him. I did not meet
2 Mark until -- well, it could have been late October when
3 I met him, but I believe it was early November.

4 Q. This was after Mark was already involved in
5 consulting for your company at Brewerytown.

6 A. I'd have to look at the records to see if that's
7 true.

8 Q. Let's do that. We'll get there.

9 In fact, it was so unimportant for you to vet
10 Mr. Heenan that you didn't even ask yourself personally
11 for his resumé; is that correct?

12 A. Incorrect.

13 Q. And you didn't ask either for his project
14 history at that time, did you?

15 A. I was handed the information for Mark Heenan,
16 and he also had a LinkedIn profile.

17 Q. Who handed you that information?

18 A. I believe I received it from John Sciutto.

19 Q. Isn't it true that John Sciutto only sent you
20 via E-mail Mr. Heenan's two-page resumé?

21 A. I don't recall.

22 Q. But you claim to this jury that you were
23 relied on Mr. Heenan's resumé, his project history
24 before you hired him, didn't you?

25 A. Correct.

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1 Q. But that's not true. You didn't even vet
2 Mr. Heenan prior to allowing him to work with you at
3 Decus, Inc.; isn't that correct?

4 A. Incorrect.

5 Q. You also testified that you received that
6 project list with his resumé, but that's not true, is
7 it, either, Mr. Aloia?

8 A. No. His project list is attached to his
9 LinkedIn page.

10 Q. But it's not attached to the resumé that John
11 Sciotto provided to you; is that true?

12 A. That paperwork that I was provided has a project
13 list to it.

14 Q. Mr. Heenan did not provide that project list
15 to you, did he?

16 A. Mr. Heenan didn't hand me anything.

17 Q. Mr. Sciotto didn't either, did he?

18 A. He did.

19 Q. The resumé only, correct?

20 A. The three pages that I have and only the project
21 list is what I received.

22 Q. Okay. That's your testimony, and you're
23 sticking to it.

24 What did you do to vet out those projects at
25 the time you received that project list?

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1 A. I discussed them with Mark Heenan.

2 Q. What did you discuss with Mark Heenan?

3 A. We picked a couple of projects that we
4 discussed. They were also on his LinkedIn page. He
5 explained to me what happened on those projects, who
6 some of the owners were and contract sizes and how the
7 projects went.

8 Q. And he did work on those projects, didn't he?

9 A. I can't say that he worked in the role that he
10 claimed he worked on them. The information provided by
11 Bill Hessert states that he was a laborer on some.

12 He gave us some financials of what Mark got
13 paid on each and every one of those projects, and it
14 doesn't line up with that of an owner of a company.

15 Q. You found that information after you started
16 colluding with Mr. Hessert to destroy Mark Heenan,
17 correct?

18 A. That's incorrect. I didn't collude or try to
19 destroy Mark Heenan with Bill Hessert.

20 Q. I want you to look the jury in the face and
21 tell them that you didn't try to collude with
22 Mr. Hessert because you didn't reach out to
23 Mr. Hessert to vet Mr. Heenan, did you?

24 A. Mr. Hessert reached out to me and contacted me
25 and somehow received my phone number from one of his

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1 employees.

2 Q. Answer the question, sir.

3 MR. WATSON: Objection.

4 THE COURT: No.

5 BY MS. LAVAN:

6 Q. Did you contact Mr. Hessert to vet --

7 A. I received his phone call.

8 Q. -- to vet Mr. Heenan? This is what you do.

9 You vet before you go into a partnership.

10 Did you contact Mr. Hessert at the beginning of
11 the arrangement? I'm not talking about after you
12 colluded with him.

13 At the beginning of the relationship, did you
14 contact Mr. Hessert to ask him whether or not Mark did,
15 in fact, work on all those projects?

16 A. I did not.

17 Q. You didn't do that because it didn't matter
18 to you at that point because you did not rely on
19 those projects before working with Mark Heenan.

20 You relied on John Sciutto's opinion of
21 Mr. Heenan; isn't that correct?

22 A. That's incorrect. Mark Heenan represented --

23 Q. Yes or no?

24 A. Mark Heenan represented --

25 Q. Yes or no? You relied on John Sciutto's

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1 opinion because John Sciutto had worked with
2 Mr. Heenan previously at Hessert; isn't that true?

3 A. In part.

4 Q. But you stand up here today in this
5 litigation, and you make the claim that you relied on
6 projects that Mr. Heenan apparently told you that he
7 worked on all of them in a conversation that you had
8 in the beginning of the partnership.

9 That's not true, is it?

10 A. That's incorrect.

11 Q. Am I correct when I say Mr. Sciutto had
12 worked with Mark Heenan at Hessert?

13 A. Yes.

14 Q. Am I correct when I say that at Mr. Hessert's
15 re-deposition the other day that Mr. Hessert did
16 testify that Mark Heenan did work on all of those
17 projects or at least most of them?

18 A. I didn't see his deposition.

19 Q. Did you read it?

20 A. I did not.

21 Q. It wasn't that important to you, was it?

22 A. It wasn't necessary.

23 Q. Prior to Mark partnering with Decus, you
24 didn't use the Decus Construction logo, did you?

25 A. We did.

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1 Q. You used the old logo, correct?

2 A. Incorrect.

3 Q. What work was Decus Construction doing, Decus
4 Construction, not Decus, Inc., that you needed to use
5 that logo for?

6 A. The Decus Construction logo or Decus mark is
7 used interchangeably with Decus, Inc. and Decus
8 Construction.

9 Q. And this comes from a gentleman that
10 testified yesterday that he didn't want to create
11 confusion between Decus, Inc. and Decus Construction
12 and, therefore, that's why he formed the two
13 entities, wasn't that your testimony yesterday?

14 A. We were trying to market construction. At the
15 time Decus, Inc. was performing construction.

16 Q. So Decus Construction was only a marketing
17 company, correct?

18 A. No.

19 Q. I asked you what project Decus Construction
20 did prior to partnering with Mark that you used the
21 new Decus logo. Let's just say any Decus logo.

22 What projects was Decus Construction performing
23 prior to Mark joining? It's an easy question.

24 A. So you're stating it was Mark partnering with
25 us. We didn't partner with Mark.

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1 Q. Answer the question. Call it partnering.
2 Call it whatever you want.

3 A. While we were working with Mark, we were working
4 on Brewerytown, Lopresti Foods. We were working on
5 Marriott, and I think we were finishing up several
6 smaller markets.

7 Q. Did you produce any of those documents during
8 this litigation regarding doing work for Marriott?

9 A. I don't see the relevance. Those weren't
10 produced.

11 Q. You don't see the relevance in the fact that
12 whether or not you were using the Decus Construction
13 logo prior to partnering with Mark? You don't see
14 that being relevant, do you, Mr. Aloia?

15 A. I think if you put it in those terms, I would
16 see the relevance, but it's on all of our documentation.

17 Q. Isn't it true that you cherry-picked the
18 evidence you wanted to produce during this litigation
19 to what you thought was relevant so much so that
20 that's what you told me in your deposition?

21 A. No.

22 Q. Is it true that you never produced until much
23 later an agreement between you and John Sciotto for
24 Decus Construction?

25 A. You had asked for the documentation. If I

1 remember correctly in my deposition, you claim that you
2 had asked for it. My attorney said he would produce
3 that document if you are requesting it at that time.

4 Q. It wasn't produced, was it?

5 A. I believe it was produced.

6 Q. It wasn't produced prior to any time that
7 your attorney handed it over because it didn't exist,
8 did it?

9 A. I know it existed.

10 Q. You made that document up for purposes of
11 this litigation?

12 A. No.

13 Q. Then why didn't you produce it at the very
14 beginning of production when you knew that Decus
15 Construction is the biggest party in this litigation?

16 A. That document is notarized. Are you claiming
17 that that's a forgery as well?

18 Q. I'm claiming that you knew that that document
19 was important, and it didn't exist prior to you
20 forging it pursuant to this litigation.

21 For a gentleman that claims that documentation
22 is so important, you didn't produce that document until
23 much later, did you?

24 A. I'd have to look at the document production. It
25 was produced and if it wasn't produced in the beginning,

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1 when you requested it, it was produced.

2 MR. WATSON: Your Honor, maybe a reference
3 to the Exhibit number for that.

4 THE COURT: You'll get that on redirect,
5 sir.

6 MS. LAVAN: I'll get that.

7 BY MS. LAVAN:

8 Q. You knew exactly what you were doing, didn't
9 you, Mr. Aloia, when you strung Mark along making him
10 believe that he was going to be a partner at Decus
11 Construction. You knew exactly what you were doing.

12 A. As far as?

13 Q. You sit up there and you look so coy, but you
14 and I both know and in your deposition you knew
15 exactly what you were doing. You were stringing
16 Mr. Heenan along so you could get something for
17 nothing. You wanted money on projects that you
18 testified a minute ago you know nothing about.

19 MR. WATSON: Your Honor, objection.

20 THE COURT: Counsel, you cannot
21 characterize the looks of a witness. That part is
22 stricken.

23 MS. LAVAN: Sure.

24 THE COURT: That's improper, ladies and
25 gentlemen.

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1 Take out the reference to anything about what
2 somebody looks like.

3 Ask the questions on the facts, ma'am.

4 BY MS. LAVAN:

5 Q. South Jersey CML, what was that job? What
6 was that project? More importantly, what did you do
7 on that project?

8 A. That project was an expansion of their existing
9 bakery. There were interior walls that were erected.

10 Q. What did you do on that job? Did you put the
11 interior walls up?

12 A. No.

13 Q. I am asking you, and I want it to be clear
14 for the jury and the judge. I want to know what you
15 did on that job, not what was done.

16 What did you do?

17 A. What I personally did on that project was I went
18 down to the project several times. I went to several
19 meetings with that owner. I picked up the fencing for
20 the front of the building. There was a pad that was
21 just poured, and Mark was going to pick that fencing up,
22 which he did not. So --

23 Q. Did you pick the fence up?

24 A. I personally picked the fence up in my pickup
25 truck.

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1 Q. So you picked the fence up?

2 A. Can I answer your question?

3 Q. Yes.

4 A. I loaded the materials into my truck. I got
5 everything the contractor needed to install it,
6 delivered it on a Saturday. I also stayed there for the
7 entire weekend while those guys worked, because Mark was
8 not able to oversee that work. After that, I contacted
9 the owners several times to try to get payment, which
10 they claim that Mark had collected.

11 Q. How much payment did you try to get for that
12 work that you did? What was that amount?

13 A. We were trying to collect on the payment
14 applications.

15 Q. What amount?

16 A. Payment applications.

17 Q. \$187,000?

18 A. The overall contract was \$187,000.

19 Q. Okay. So you wanted \$187,000 because you
20 picked up a fence and worked all weekend? That is
21 what you did that you wanted \$187,000 for? Again,
22 you wanted something for nothing, Mr. Aloia; isn't
23 that correct?

24 A. In construction, if somebody is paying you --

25 Q. Answer the question.

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1 MR. WATSON: He's trying to answer it.

2 THE COURT: It's a yes or no, and then you
3 can answer it. So it's a yes or no.

4 Is that correct?

5 THE WITNESS: That is incorrect.

6 THE COURT: Okay. You may answer.

7 THE WITNESS: In construction, if a client
8 is going to pay you \$187,000 for a scope of work,
9 whether you're going to make money or not, that's the
10 project you do.

11 On this particular project Mark was down there,
12 and he was dealing with subcontractors. The issue John
13 and I had was that we weren't receiving the information
14 on these subcontractors.

15 The limited scope of work that I did personally
16 is not the entire project. The entire project
17 encompasses plumbing, HVAC, some electrical work. There
18 was a new door going to the side of the building, which
19 was a change order. There was concrete ramp. There was
20 a loading dock that --

21 BY MS. LAVAN:

22 Q. It sounds so amazing --

23 MR. WATSON: Objection.

24 THE COURT: Ma'am, you have to let him
25 answer the question. It's not an argument.

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1 THE WITNESS: There were two loading docks
2 that were torn out and formed up and poured, which I was
3 there for. So our job is general contracting,
4 construction management. So we manage things. We don't
5 always physically do the work. We subcontract that work
6 out.

7 BY MS. LAVAN:

8 Q. But you wanted \$187,000 --

9 MR. WATSON: Your Honor, objection. He
10 wasn't finished with the answer.

11 THE COURT: Overruled. He answered the
12 question that was asked. He may have wanted to talk to
13 more, but he answered the question.

14 Next question.

15 BY MS. LAVAN:

16 Q. You wanted \$187,000 for work that you claimed
17 you did for the weekend and for picking up a fence,
18 correct? Do I have that right?

19 A. Incorrect.

20 Q. As you sit here today, I still asked, and you
21 still haven't answered, what work did you do on this
22 job, not the beautiful detailed intelligent answer
23 you're trying to give the jury about work that other
24 people did. I'm asking what you did.

25 You filed a lien for \$187,000 on this

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1 particular project, didn't you?

2 A. We did not for 187.

3 Q. How much was the lien?

4 A. 134.

5 Q. Okay. \$134,000.

6 What other work did you do?

7 THE COURT: When you say "you," I think the
8 confusion we're all having is "you," him, or "you," the
9 company?

10 MR. WATSON: Mr. Aloia.

11 THE WITNESS: Personally.

12 BY MS. LAVAN:

13 Q. What work did you do? You gave your work,
14 right?

15 A. I'm not a sole proprietor.

16 Q. It sounds so studious.

17 MR. WATSON: Objection.

18 THE COURT: Ma'am, you can't characterize
19 witness testimony.

20 BY MS. LAVAN:

21 Q. What work did Decus do?

22 A. Decus has received invoices from subcontractors
23 that Mark Heenan subcontracted with, our company, that
24 haven't been paid. So Decus, Inc. or Decus
25 Construction, Inc. has a liability, and until that is

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1 satisfied we're still at risk and I believe a breach of
2 contract action is four years in the state of
3 Pennsylvania.

4 So at any point, until there's satisfaction of
5 those payments we're still liable for that. We're
6 liable --

7 Q. You didn't answer the question. I asked --

8 A. I answered the question.

9 Q. No, you didn't answer the question. I asked
10 what work Decus did, and you can't answer it and
11 you're giving some response that isn't answering the
12 question. It's important because you lien this
13 property for, your testimony, 130,000-some dollars.

14 It's also important because are you aware that
15 the subcontractors you're referring to, most of them, if
16 not all of them, were actually paid by Mr. Heenan?

17 A. I've heard that claim. Not all of them have
18 been paid.

19 Q. But you know most of them have been paid?

20 A. I can't say that's correct.

21 Q. And you don't know because you haven't even
22 done your due diligence, correct?

23 A. We've spoken with the subcontractors.

24 Q. Has any subcontractor filed a complaint
25 against you or your company for non-payment?

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1 A. No, because we told them that we're in
2 litigation over it.

3 Q. No, because they have all been paid, correct?

4 A. Incorrect. The paperwork that I have, that's
5 incorrect.

6 Q. You testified a minute ago that you never saw
7 that Decus Construction paperwork.

8 Do you realize that at the bottom right-hand
9 corner we have something called Bates labels?

10 A. I understand that.

11 Q. You're aware of that, right?

12 A. Yes.

13 Q. Do you know that you produced that document
14 to my client?

15 A. That's possible.

16 Q. It's possible. It is. It says "Decus" at
17 the bottom of it in the Bates label.

18 So your testimony that you never saw it and you
19 were so surprised when it came up on the screen, that's
20 not true, is it?

21 A. I didn't review every last document. What we
22 did to collect these documents is we took --

23 Q. Answer the question.

24 MR. WATSON: Your Honor, he's trying to.

25 MS. LAVAN: No, it was a Decus --

1 THE COURT: Ma'am, don't argue with the
2 witness.

3 MR. WATSON: Objection.

4 THE COURT: It's a yes or no question, and
5 then you may answer it, sir. Go ahead.

6 BY MS. LAVAN:

7 Q. Was it a Decus Bates-labeled document?

8 THE COURT: Do you know, sir, yes or no?

9 THE WITNESS: I don't know. If I could
10 look at it, I could tell you.

11 THE COURT: Next question.

12 BY MS. LAVAN:

13 Q. So it's safe to say at the time up until
14 today, which your testimony is it's the first time
15 you saw it, you had that document in your production
16 and in your possession, correct?

17 A. If it's a Decus-based label, yes.

18 THE COURT: Ladies and gentlemen, Bates
19 label is a document. They are talking about inside
20 baseball about litigation. A Bates number is a number
21 that goes on the bottom of documents so lawyers can keep
22 track of the documents. If there are 20 documents, it's
23 labeled one, two, three, four, five, six, seven.

24 Continue. It was Bates stamped by Decus, you
25 may have seen it.

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1 Next question.

2 BY MS. LAVAN:

3 Q. You're aware that South Jersey CML had more
4 phases; is that correct?

5 A. Yes.

6 Q. And you're also aware that those phases never
7 came to fruition, correct?

8 A. I don't know that they haven't. Mark claimed
9 that Phase II actually did happen.

10 Q. Well, you had the opportunity to ask the
11 owner of South Jersey CML in his deposition, which is
12 testimony under oath, whether or not those phases
13 went to completion, didn't you?

14 A. I didn't depose the South Jersey --

15 Q. Your attorney did, correct?

16 A. Correct.

17 Q. As we sit here today, you're aware that the
18 South Jersey CML additional Phases II and III or at
19 least III never went to fruition because you
20 interfered with the contract and filed a lien on the
21 owner's property; isn't that correct?

22 A. We filed a lien, but I had seen no documentation
23 that those phases didn't move forward with another
24 contractor. I hadn't seen any documentation that
25 Mr. Heenan didn't do those projects.

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1 Q. But you don't have any documentation or
2 evidence from the owner who your attorney deposed and
3 asked to bring all the documentation with him
4 regarding this lawsuit that the project did go
5 through, do you?

6 A. I'm not aware of any, no.

7 Q. So is it safe to say that the South Jersey
8 CML Project was probably just a mere hope?

9 A. I can't answer that.

10 Q. And that mere hope was destroyed by your
11 filing the lien on the project?

12 A. Again, I can't answer that. That's your
13 characterization of it.

14 Q. That lien was overstated?

15 A. I don't believe that loan was overstated.

16 Q. Are you aware that SJCMR's attorney filed and
17 made an event of an improper lien?

18 A. I'm aware of that, yes, because it was Southern
19 Jersey CML who we contracted with, not South Jersey CML.

20 Q. Right. So you're aware that the lien was
21 improper, correct?

22 A. The legal characterization of it, I can't
23 comment. I have to go to my attorney on it.

24 Q. Let's talk about the Gloucester project.

25 What work did you individually do on the

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1 Gloucester project?

2 A. On the Gloucester project, I prepared a
3 schedule. My side of the construction is really on the
4 operations. This was preconstruction. John Sciotto
5 handled most of the work on that.

6 Q. So you did a schedule; is that right?

7 A. I did a projected schedule for the project.

8 Q. Do you know about how long that schedule took
9 you to make?

10 A. I don't.

11 Q. Are you aware that Mr. Hessert has been in
12 construction for over 40 years?

13 A. I don't know Mr. Hessert's resumé.

14 Q. You did a schedule on Gloucester, correct,
15 and that's it?

16 A. I went to meetings with Mark, with the owner. I
17 attended some meetings with Chris Pappano. I was on
18 several conference calls as well.

19 Q. So it's safe to say, though, that that
20 schedule took you what, a few hours to make?

21 A. No.

22 Q. The meetings you went to in Gloucester, those
23 were with Mark Heenan, correct?

24 A. Correct.

25 Q. And that's because these were Mark Heenan's

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1 contacts?

2 A. That's correct.

3 Q. And this was Mark Heenan's project.

4 A. Well, in actuality, I believe it was a Hessert
5 project that we found out in this litigation.

6 Q. Are you aware that Mr. Hessert testified that
7 this was given to Mr. Heenan?

8 A. I'm not.

9 Q. You also filed a lien on that property,
10 correct?

11 A. Correct.

12 Q. And what was that lien amount for?

13 A. I don't recall.

14 Q. As you sit here today as the Operations
15 manager of Decus, what did John Sciutto do for the
16 Gloucester project?

17 A. There was a whole drop box file on the documents
18 that we put together and that John worked on. He could
19 probably go through them for you.

20 Q. But you're the Operations manager, correct?

21 A. I'm the Chief Operating Officer of the company.

22 Q. Okay. But you don't know what your single
23 partner did on that particular job?

24 A. He worked on fiber studies. He's worked on
25 several estimates for the project. He worked on some

1 designs with a local architect, wire architects for
2 that. He had done some reporting for Brian Honish. I
3 reviewed those reports. He worked with trying to get a
4 client for that site. Those are a couple things, off
5 the top of my head, that I can remember.

6 Q. How much time do you think that took?

7 A. I have no idea. I would say in the hundreds of
8 hours.

9 Q. You filed a lien on that project for about
10 \$128,000, correct?

11 A. If the lien states 128, that would be the
12 correct amount.

13 Q. But prior to filing the lien, you as the
14 owner or you as the contractor, the prime, whatever,
15 you actually need to detail the work you do, don't
16 you?

17 A. I'm not aware of the legal basis for a lien. We
18 provided the documentation that our attorneys needed, so
19 they could file the lien. I believe that lien has
20 survived preliminary objections and still sits on the
21 property today. It's in foreclosure.

22 Q. When you do that, you need to certify the
23 last time you did work on that Gloucester project,
24 correct?

25 A. Yes, that's one of the stipulations for a lien.

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1 Q. So you do know what needs to be done before
2 you file a lien?

3 A. Not everything, no.

4 Q. But you have a pretty good understanding,
5 correct?

6 A. No, I don't. I'm not an attorney.

7 Q. You do realize that you're pretty good at
8 giving legal terms, preliminary objections.

9 You're smarter than you think you are when it
10 comes to law, correct?

11 A. That's a basis that you're making.

12 MR. WATSON: Objection.

13 THE COURT: Sustained.

14 BY MS. LAVAN:

15 Q. You filed an improper lien on Gloucester.

16 A. I disagree with you.

17 Q. You filed a lien for \$128,000 on work that
18 you didn't do and that you claimed Decus did that
19 amounted to \$128,000 when the estimate that was done
20 was actually for incorrect information, so it was
21 wrong.

22 Are you aware of that?

23 A. I heard Mr. Heenan's testimony, but I don't
24 think you're aware that several estimates have been done
25 on that project, and the last one was the last estimate

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1 that Mr. Lemus requested, which was sent to him which
2 was several months past that date.

3 Q. An estimate like that probably takes several
4 hours, correct?

5 A. An estimate for a multimillion-dollar building
6 would not take several hours, no.

7 Q. Are you aware if you take \$128,000 and you
8 divide it by time, because that's all you did on this
9 job was time, correct?

10 A. I believe it was a lump sum with a unit pricing
11 for different tasks and traits.

12 Q. But you didn't bill anything, did you?

13 A. No. It's preconstruction services. We're not
14 building anything. It's preconstruction services.

15 Q. So you didn't bill anything.

16 You did an estimate, correct? The estimate was
17 inaccurate, correct?

18 A. Incorrect.

19 Q. Well, John could probably testify to that.

20 And you billed Gloucester \$128,000, correct?

21 A. Incorrect.

22 Q. You billed them \$128,000?

23 A. We billed them more than that.

24 Q. More than that. More than that.

25 You're right, the lien was for \$128,000,

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1 correct?

2 A. Correct.

3 Q. So you did bill more than that. The lien is
4 for \$128,000.

5 Are you aware that the owner of Gloucester has
6 come back and said that that lien is improper?

7 A. I would assume that he's upset, but I haven't
8 seen any legal paperwork on that.

9 Q. Are you aware that the Gloucester project
10 failed to go to fruition because of your improper
11 lien?

12 A. I don't know that.

13 Q. Were you at Trish Pappano's deposition when
14 we had it?

15 A. I was not.

16 Q. Did you read her transcript?

17 A. I did not.

18 Q. You're also aware that that job that you're
19 claiming anticipated profits on never happened,
20 correct?

21 A. I'm aware that the project has been lingering, I
22 believe, for five years.

23 Q. So, again, the anticipated profits that your
24 attorney put up on the screen, they are only
25 anticipated, correct?

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1 A. They are anticipated, but if the client would
2 have paid his bill, I think he would have avoided a lien
3 against the project.

4 Q. I'm talking about the sheet that was put up
5 here that I can put up again, if you'd like me to, so
6 we can go through it.

7 THE COURT: Let's do this, Ms. LaVan.

8 Let's take a mid-morning break for the jury, ten or 15
9 minutes or so.

10 Ladies and gentlemen, we'll be back with you,
11 grab you in about ten minutes or so. Again, we take
12 lunch at 12:15, so come back and we'll go to 12:15.

13 Thank you very much.

14 (The jury exited the courtroom at 10:30 a.m.)

15 THE COURT: Sir, same directions to you.
16 Don't speak to anyone.

17 All counsel, it is error. It's not reversible
18 error, but it's error to characterize your -- you cannot
19 provide in any way, shape or form your opinion about a
20 witness. Your opinion doesn't matter. It just doesn't
21 matter.

22 If you do that, next time it happens with any
23 counsel I'm going to say to you in front of the jury
24 simply that. Whatever you say doesn't matter, counsel.
25 So please do not characterize a witness.

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1 Thank you very.

2 (Recess was held at 10:30 a.m.)

3 (The Court resumed the proceedings at
4 10:50 a.m.)

5 MS. LAVAN: I've been made aware that
6 Mr. Aloia was talking to his attorney out in the hallway
7 about his testimony. I wanted to make you aware of
8 that.

9 THE COURT: Thank you.

10 MR. WATSON: That's not true.

11 THE COURT: I asked you whether you follow
12 my direction in speaking to your attorney about your
13 testimony. There's been a statement made by counsel for
14 the defense that you have done so.

15 What conversations did you with your counsel in
16 the hallway?

17 THE WITNESS: I didn't have any
18 conversations with my attorney. I walked down the
19 hallway. He asked John a question regarding two
20 witnesses. At that point, Ms. LaVan made a comment that
21 we were discussing testimony. Mr. Watson said that is
22 untrue. And I left. I walked back into the courtroom.

23 THE COURT: You had a conversation about
24 two witnesses about to come?

25 THE WITNESS: He asked about calling two

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1 witnesses.

2 MR. WATSON: Your Honor, we were trying to
3 decide whether to call Pappano and Patel and we're not
4 going to call them today.

5 THE COURT: Ms. LaVan, what credibility do
6 you have?

7 MS. LAVAN: We were made to believe -- not
8 me, because I didn't hear it -- that he was talking to
9 his attorney about Gloucester, which was the topic of
10 our conversation before we --

11 THE COURT: You were talking about people,
12 Pappano, that was related to Gloucester? I don't know.

13 THE WITNESS: Yes.

14 THE COURT: Did you talk about the
15 testimony about Gloucester?

16 THE WITNESS: No.

17 THE COURT: Okay. I will let it go. You
18 are under direction, though. I'm not disagreeing that I
19 should hear about it. If you hear it, tell me, but it
20 should be strictly enforced and not to be spoken about.

21 THE WITNESS: All right.

22 (The jury entered the courtroom at 10:50 a.m.)

23 THE COURT: You recall we are in the
24 cross-examination.

25 Ms. LaVan, you may continue.

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1 MS. LAVAN: Thank you.

2 I'm going to bring up Exhibit 20, which was on
3 the screen previously, so the jury can see it.

4 BY MS. LAVAN:

5 Q. Mr. Aloia, are you familiar with this
6 document? You referenced it earlier.

7 A. Yes. This is a text message between John
8 Sciotto and, I believe, Mark Heenan.

9 Q. You were not involved on this particular
10 text; is that correct?

11 A. Correct.

12 Q. You're claiming in this action lost profits
13 and damages in that amount; is that correct?

14 A. That's correct.

15 Q. Let's go through the first one. CP1.

16 Are you aware that -- strike that.

17 The top, it says "Anticipated GP."

18 What does that mean?

19 A. Anticipated gross profits.

20 Q. So the word "anticipated" is highly relevant,
21 correct?

22 A. "Anticipated" would be the expected gross
23 profits on those projects.

24 Q. And that's what they were, expected and
25 anticipated, correct?

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1 A. Correct.

2 Q. So CP1, you're aware never happened. That
3 project was never performed.

4 A. I'm not aware of that.

5 Q. Do you have any evidence that it was
6 performed?

7 A. I'd have to look through all the documentation,
8 but I believe the documents were produced for the Camden
9 Diocese of that work being performed.

10 Q. During this litigation, did your attorney
11 ever depose or get the testimony of the owner of that
12 project?

13 A. I believe there are multiple owners of that
14 project.

15 Q. Of any of them.

16 A. I don't believe they have.

17 Q. As you sit here today, you really don't know
18 whether or not CP1, which is Camden, actually
19 happened, correct?

20 A. I can't affirm that they've all been completed,
21 no.

22 Q. But you were sitting here yesterday. I think
23 it was yesterday when Mark Heenan testified that that
24 project, that anticipated GP never happened, correct?

25 A. Anticipated GP didn't happen?

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1 Q. That anticipated gross profit for CP1 never
2 occurred? It doesn't exist.

3 A. I don't doubt that I heard his testimony on
4 anticipated profits and what they were or weren't.

5 Q. Well, he did testify, did he not, that that
6 job never happened?

7 A. Well, specifically, he talked about Washington
8 Township, Gloucester Solar, CML. If he talked about the
9 Camden Diocese, I don't know that he went through all 27
10 locations.

11 Q. But again, there's no documentation of any
12 anticipated gross profit that you can show today that
13 is in the amount that's listed there on that
14 document, on that text message?

15 A. I don't have any documentation, no.

16 Q. Do you have any documentation today on CP2
17 that there was anticipated or gross profit -- forget
18 about anticipation -- that it actually happened, CP2,
19 that job for 1.1 million, actually occurred? Do you
20 have any documentation surrounding that?

21 A. I don't have any documentation, no.

22 Q. "WTS," is that Washington Township?

23 A. Solar, yes.

24 Q. Are you aware that that job never occurred?

25 A. I don't have any documentation on it, no.

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1 Mr. Heenan's testimony is that it was the same owner,
2 and that they weren't able to secure financing because
3 of the lien is what he said.

4 Q. Right. But so, therefore, as you sit here
5 today, you don't have any documentation that
6 Washington Township, WTS, actually occurred?

7 A. I don't.

8 Q. Yesterday, you heard Mr. Heenan's testimony
9 that Washington Township was, in fact, the same owner
10 as the Gloucester Township project?

11 A. Yes.

12 Q. And that because of the Gloucester Township
13 lien, those projects were not able to go to fruition.
14 They did not occur.

15 A. That was his testimony. I didn't see any
16 documentation regarding that.

17 Q. But they did not happen, correct?

18 A. They have not.

19 Q. And CML, I don't know what's in parenthesis.
20 I don't know if it's a question mark or a 9. It
21 might be a 3.

22 CML for 695, do you have any documentation that
23 that particular project actually occurred?

24 A. That project is still pending. I believe that's
25 a Trenton project where Mark's testimony was that he was

1 able to secure \$11 million in grants. Sounds like that
2 project is underway in preconstruction, and probably
3 will happen. I don't know if Mark will get that project
4 or not.

5 Q. But that particular number, right there,
6 695,000, that's just anticipated, and that has not
7 anticipated yet, correct?

8 A. Correct. It could go up. It could go down.

9 Q. South Jersey CML3, do you believe that to be
10 Phase III of that project?

11 A. Yes.

12 Q. As you sit here today, do you have any
13 documentation of evidence that that project actually
14 occurred?

15 A. No.

16 Q. So it's safe to say that all of these jobs
17 that are listed, all they are were anticipated,
18 correct?

19 A. They could still be in preconstruction.

20 Q. But you have no evidence of that today?

21 A. I don't, no.

22 Q. So if we really broke this down, it's safe to
23 say that the numbers listed there really should be a
24 zero because CP1 never happened, zero dollars,
25 correct?

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1 A. I don't agree with you.

2 Q. Well, if it never happened, how could there
3 be a gross profit on it?

4 A. There's nothing that says that it's not going to
5 happen.

6 Q. But there's nothing that says that it is
7 going to happen, correct?

8 A. I don't have any documentation on it, no.

9 Q. Your attorney put a document up there that
10 claims \$5 million in damages; is that correct? He
11 immediately took it down. Do you remember that
12 document?

13 A. I still have a copy of it.

14 Q. Where are you getting \$5 million in damages
15 from when most of the jobs that are on that sheet are
16 here, listed here in this text, and they haven't even
17 happened yet?

18 A. To answer your question, there are those
19 projects with the anticipated profits, as you've just
20 identified. There are also the misappropriated funds,
21 mostly the Gloucester project and the CML Project.
22 There are damages for a trademark infringement and
23 cyberpiracy under an Act.

24 There are legal fees that we've already
25 incurred, and the only thing missing is the legal fees

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1 that we're incurring for this trial.

2 Q. That's about \$5 million in damages, correct,
3 minus the ones that you're incurring in this trial;
4 is that true?

5 A. 5.2 million.

6 Q. Okay. So if I have this right, you're
7 claiming and you want the jury to award you
8 \$5.2 million for doing virtually nothing on any of
9 these jobs, correct?

10 A. Virtually nothing? I don't agree with that.

11 Q. Well, did you do anything, you, Decus, on
12 CP-1?

13 A. We had conference calls on it regarding those
14 projects and the grouping solar routes involved with
15 those. It's limited, so I can't say it's nothing.

16 Q. A conference call, correct?

17 A. I had meetings with Mark. We met Mark almost
18 every Monday to discuss these projects.

19 Q. Those were because Mark brought them to you,
20 correct?

21 A. Yes.

22 Q. So again, you want the jury to award you
23 \$5.2 million on anticipated profits on jobs that
24 never actually occurred?

25 A. That's a portion of it.

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1 Q. And it's safe to say then, as earlier, that
2 you want something for nothing, Mr. Aloia.

3 A. I disagree with you.

4 Q. We're going to go to Exhibit 25. It would be
5 Page 13.

6 A. My 25 is an H2 Construction.

7 Q. I'm sorry, 26, Page 13.

8 MS. LAVAN: You can blow up the bottom
9 portion of that.

10 BY MS. LAVAN:

11 Q. Are you familiar with this document?

12 A. It's text messages between Mark and myself.

13 Q. Awhile ago you testified, and correct me if
14 I'm wrong, or maybe you can explain it, Mark was
15 doing business in the name of Decus Construction,
16 correct?

17 A. Incorrect.

18 Q. And that he was actually doing business in
19 the name of Decus, Inc.; is that correct?

20 A. Yes, he was doing it in Decus, Inc.

21 Q. And you testified that he didn't have the
22 authority to do that, correct? He didn't have --

23 A. Give me what you mean by "authority"?

24 Q. Well, you had testified and, again, correct
25 me if I'm wrong, there was a proposal up on the

1 screen that said Decus, Inc., and Mr. Heenan had his
2 name on it.

3 And you had stated again, correct me if I'm
4 wrong, that Mark was doing business under the Decus,
5 Inc. name, correct?

6 A. Yes, Mark was doing work under Decus, Inc. and
7 Mark sent out proposals and I sent out correspondences,
8 E-mails and everything else.

9 Q. But when you testified earlier, you said he
10 wasn't authorized, or he was not supposed to be doing
11 business under Decus, Inc.

12 He was supposed to be doing business under
13 Decus Construction, correct?

14 A. I disagree with that. He did work under both,
15 and he had authority to do work under both.

16 Q. So it's your testimony today that Mark did
17 have authority to do business under both Decus, Inc.
18 and Decus Construction, then, correct?

19 A. Mark had the ability to do marketing for Decus,
20 Inc. or Decus Construction. What he didn't have
21 authority for was to steal our name and hide it under an
22 LLC in New Jersey.

23 Q. But he had authority to use the name Decus,
24 Inc. and Decus Construction on proposals, correct?

25 A. Our letterhead, yes.

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1 Q. Okay. And he had the authority to work on
2 the Decus, Inc. and Decus Construction website,
3 correct?

4 A. Yes. He was building it for us.

5 Q. All right. You had also provided Mr. Heenan
6 with the Decus logo content, the templates via
7 E-mail, correct?

8 A. Sure. If he was drafting a letter, he should
9 have the letterhead. If he was sending out something
10 that was going in the mail, he should have the envelope.

11 He worked on our business cards.

12 Unfortunately, he didn't send me the proofs so they
13 didn't have our address on them. And the logo he needed
14 for his E-mail, so he could attach it and it would come
15 up under his signature line.

16 Q. He did in fact do that, correct?

17 A. He did. Yes, but unfortunately, he also used it
18 for his LLC, Heenan Holdings, dba Decus Construction.
19 We didn't authorize him for that.

20 Q. But in your testimony there was no real
21 partnership agreement in place, was there?

22 A. There was no partnership agreement.

23 Q. Okay. So how did Mr. Heenan really know what
24 he had the authority to do and what he didn't have
25 the authority to do, if it wasn't spelled out in some

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1 form of an agreement?

2 A. I'm having difficulty understanding you. What
3 you're saying is that if I went to my bank today,
4 Citizens Bank --

5 Q. Just answer the question. I'm sure your
6 attorney will ask you to clarify, if you don't think
7 that I'm asking an appropriate question.

8 So my question to you is, there was no actual
9 writing of a partnership agreement or a shareholder's
10 agreement, correct?

11 A. Correct.

12 Q. But there were drafts going back and forth,
13 correct?

14 A. There were drafts, yes.

15 Q. But without a writing, how is Mr. Heenan to
16 know he has the authority to use the logo at the
17 bottom of the E-mail? No. Yes. Right? How was he
18 going to know that?

19 A. No, I think you're confusing the issue. The
20 issue here is Mark was supposed to be using our mark for
21 Decus, Inc. and Decus Construction. Common sense tells
22 you that you don't steal someone else's mark and use it
23 for your own company.

24 Q. See, here's the thing about stealing it,
25 Mr. Aloia. He didn't steal it, did he? Because he

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1 believed and you led him to believe that he was a
2 partner in Decus Construction.

3 A. I did not.

4 Q. So let's talk about that.

5 Do you recall several E-mail correspondence
6 going back and forth where you discussed partnership
7 with Mr. Heenan?

8 A. Yes. There's no denying that there were
9 discussions about partnerships and shares and buy-ins
10 and evaluating the cost of a share, but at the end of
11 the day nothing was signed, not even the business
12 understanding letter that was drafted and sent to
13 Mr. Heenan did he sign anything.

14 Q. So you're really concerned about all these
15 legal terms and legal contracts, correct?

16 A. In what context?

17 Q. Well, for someone that's so concerned, why
18 didn't you actually have and finalize the
19 shareholders agreement and the partnership agreement
20 that you had drafted, or he had drafted and gone back
21 and forth, why didn't you finalize it?

22 A. That was simple. When we went to go and
23 finalize it, Mark was unable to write the check for what
24 we had all agreed to for a buy-in, and the agreement
25 quickly changed to a zero share. He was no longer to be

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1 an equity partner. He was going to go back to the
2 original agreement of 20 percent, and that's what we
3 were trying to finalize, an agreement for him getting
4 20 percent net profits.

5 The problem was that we went back and forth,
6 all the delay tactics are on Mark's side, and nothing
7 got signed. At the end of the day, nothing got signed.

8 Q. That is true, Mr. Aloia, correct?

9 But how is he going to sign an agreement when
10 you kept changing the terms? Did you not agree that you
11 were going to be equal partners in Decus Construction?

12 A. I didn't agree with anything beyond the 750 a
13 week and 20-percent net profits. That is still to this
14 day the only agreement that we have. That was an oral
15 agreement that we reduced to paper, and it never got
16 signed.

17 Q. Are you saying that later on you didn't
18 change your terms, and then all of a sudden ask that
19 Mr. Heenan actually pay you to join Decus
20 Construction?

21 A. As we stated before and discussed, there was a
22 draft partnership agreement and, yes, the terms did
23 change, but, again, nothing was signed. Nothing got
24 executed.

25 Q. You're right, nothing was signed, Mr. Aloia.

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1 But what happened was you led Mr. Heenan to
2 believe that he was a partner of Decus Construction by
3 way of draft partnership agreements, shareholder
4 agreements, correct?

5 A. Incorrect.

6 Q. Referring to him as a partner in E-mails?

7 A. He was not a partner until we had a signed
8 document.

9 Q. But how is he going to sign a document,
10 again? I'm going to ask you that you kept changing.
11 First he was an equal partner. Then you said, no, he
12 only gets 20 percent of the profits.

13 Then you even went further to say, no, guess
14 what, "You did all the work for the last six to eight
15 months, Mr. Heenan, but now you need to pay us to be an
16 owner" in a company that he already thinks he's an owner
17 of, correct?

18 A. Incorrect.

19 Q. To the point of which, when you did the legal
20 thing and you registered Decus Construction, you
21 listed yourself as the only owner, correct?

22 A. Incorrect. I hired a company to do that. The
23 documents we provided you --

24 MR. WATSON: Your Honor, objection.

25 THE COURT: Overruled. It doesn't need to

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1 be argumentative.

2 MR. WATSON: The body language, Your Honor.

3 THE COURT: It's cross-examination.

4 Sir, you've answered.

5 Next question.

6 BY MS. LAVAN:

7 Q. You had somebody else do it, but you told
8 that somebody else what to include, correct?

9 A. Correct.

10 Q. Who did you hire to do that?

11 A. I hired a company called Turnkey Business
12 Solutions.

13 Q. And you gave them the information?

14 A. I sent them an E-mail with the information for
15 the two partners of the corporation, John Sciutto and
16 Thomas Aloia.

17 Q. And you didn't produce that, did you?

18 A. I produced the S Selection.

19 Q. No, you didn't produce the E-mail --

20 THE COURT: You have to let the court
21 reporter get it all down, other than you and I. I'm
22 talking to the jurors. But make sure the court reporter
23 gets it all down.

24 Go ahead.

25 THE WITNESS: The S Selection, which is the

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1 IRS form --

2 BY MS. LAVAN:

3 Q. No, I asked you whether you produced the
4 E-mails with the company that formed the legal entity
5 because that should have been produced.

6 A. We produced all documents that you requested.

7 Q. Mr. Aloia, you registered Decus Construction
8 on November 27th, 2015, correct?

9 A. Correct.

10 Q. And that was just a few days after you had
11 corresponded with Mr. Heenan about being a partner in
12 the business.

13 A. I believe the correspondence came from
14 Mr. Heenan, and he had labeled it as a high-level idea
15 for what were the next steps.

16 Q. Whether you hired somebody or provided the
17 information to them, that document only had your name
18 on it, correct?

19 A. Which document?

20 Q. The registering of Decus Construction.

21 A. Can you show me the document?

22 Q. Sure. We're going to pop it up on the
23 screen.

24 We can go through this, but you're also aware
25 that not only did you not include Mark Heenan's name,

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1 that you didn't even include your actual other partner,
2 who actually you had stated your partner is John
3 Sciotto, in that document, correct?

4 A. I didn't file that document. As I stated, I
5 hired a corporation to do it.

6 MS. LAVAN: Go to the top.

7 BY MS. LAVAN:

8 Q. This date, Mr. Aloia, first of all, are you
9 familiar with this document?

10 A. Yes, is the document filed by Dana Lopardo with
11 turnkey.

12 Q. Okay. The date on it is what, 11-27-2015; is
13 that correct?

14 A. Correct.

15 Q. So is it safe to say Decus Construction,
16 Inc., this particular name, wasn't even registered
17 until 11-22-2005 because it wasn't even an entity
18 until that date, correct?

19 A. Correct.

20 Q. This is about the time, 11-27-2005, when you
21 had been discussing partnership with Mr. Heenan,
22 correct?

23 A. We were discussing business opportunities, not a
24 partnership.

25 Q. Okay.

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1 MS. LAVAN: Go down.

2 BY MS. LAVAN:

3 Q. This is a legal document; is that correct?

4 A. I'm sure it's a legal document. It's filed with
5 the State.

6 Q. You provided the information, you had said,
7 to the person who filed this for you; is that
8 correct?

9 A. I did.

10 Q. Why don't you explain a little bit, those
11 companies, how they work? What did you do?

12 A. I spoke to Dana Lopardo. She asked me who the
13 members were going to be or partners. She asked me what
14 documents I needed. I told her I needed the IRS forms,
15 the State form. She gave me a fee. I gave her the
16 information. I gave her John's Social Security number.
17 I gave her my Social Security number and our home
18 addresses. That was it.

19 Q. Prior to this date, you and John Sciutto
20 already had an agreement between the two of you about
21 the ownership of Decus Construction; isn't that
22 correct?

23 A. We had an agreement for Decus, Inc. prior to
24 this.

25 Q. So you didn't have an agreement between you

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1 for Decus Construction prior to?

2 A. No, no. Our first agreement that we signed was,
3 I believe, May of 2015.

4 Q. You provided this information to the company.

5 Did you review it before it was filed?

6 A. I did not.

7 Q. But it is an important legal document, isn't
8 it?

9 A. Yes. I didn't get a copy of this until --
10 actually, I got a copy of this when Mark gave us a copy
11 of it.

12 Q. But this is your document, so why would you
13 only get a copy of it when Mark gave it to you?

14 A. We have a binder that we received as a
15 corporation binder, but this was not attached to it. I
16 had spoken to Dana since, and she had sent me these
17 documents.

18 Q. Right here at the very bottom of this legal
19 document it says, "In testimony whereof, the
20 incorporators has have signed these Articles of
21 Incorporation this 27th day of November, 2015."

22 And your signature is on it?

23 A. My name is typed there. It's not my signature.

24 Q. Do you realize what that box says, "In
25 testimony whereof"? It says that you signed it,

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1 whether it be a written signature or an electronic
2 signature, doesn't it, Mr. Aloia?

3 A. Or I gave someone authority to file the
4 paperwork for me.

5 Q. You do realize that that doesn't prevent you
6 from being able to review this document and have it
7 be accurate, correct?

8 A. Nothing would prevent me from reviewing the
9 document unless I, for some reason, couldn't get ahold
10 of it.

11 Q. So it's your testimony that you couldn't get
12 ahold of him now?

13 A. I couldn't get ahold of the document? I did not
14 state that, no.

15 MS. LAVAN: I want to refer to Exhibit 27,
16 please. Go to the top first.

17 BY MS. LAVAN:

18 Q. This is an E-mail -- and, Mr. Aloia, can you
19 see this in your binder?

20 A. I can.

21 MS. LAVAN: Your Honor, we're on 27.

22 THE COURT: Thank you.

23 BY MS. LAVAN:

24 Q. This is from Mark Heenan to John Sciutto and
25 Thomas Aloia, "Proposed Profit Sharing Structures";

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1 is that correct?

2 A. Yes.

3 Q. The date of that is November 24th, 2015; is
4 that correct?

5 A. Correct.

6 Q. So this E-mail was three days before that
7 article was testified and your signature was on the
8 bottom of it and it was registered with the State,
9 correct?

10 A. I'll agree that it was filed on the 27th, and
11 that my name was typed there. It's not my signature.

12 Q. Would you agree --

13 MR. WATSON: Your Honor, objection. He's
14 trying to answer the question.

15 THE COURT: No, overruled. You'll get to
16 redirect.

17 MR. WATSON: No, she's interrupting him.

18 THE COURT: Don't interrupt.

19 MS. LAVAN: I'm sorry. I thought he was
20 done.

21 THE COURT: I thought he was finished, too.

22 Go ahead, sir, finish your answer.

23 THE WITNESS: That's fine. I've lost my
24 train of thought.

25

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1 BY MS. LAVAN:

2 Q. You would agree, though, that you provided
3 Dana the information, correct?

4 A. I don't recall what day I gave her the
5 information.

6 Q. I didn't ask the day, Mr. Aloia. I said, you
7 would agree that you provided her the information
8 that was supposed to go into that legal document?

9 A. Yes, I provided her with the information for
10 that document, and I gave her authority to file it.

11 THE COURT: This is the same information
12 that you talked about a few minutes ago, correct?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Just making sure we are
15 doing the same thing.

16 MS. LAVAN: Yes.

17 BY MS. LAVAN:

18 Q. Again, three days prior, Mr. Heenan wrote an
19 E-mail to you.

20 Are you familiar with this document?

21 A. I am, yes.

22 Q. Okay. It says in here --

23 MS. LAVAN: Go down a little bit. Thank
24 you. Wait. Second paragraph.

25

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1 BY MS. LAVAN:

2 Q. It says, "I'd like to explore a partnership
3 in further depth"; is that correct?

4 A. That's what he is stating, yes.

5 Q. Would that lead somebody to believe that you
6 had been discussing partnership?

7 A. What it states is that, "I'd like to explore a
8 partnership in further depth."

9 Q. Right.

10 A. And then as we previously discussed, he starts
11 to talk about his issues.

12 Q. He did. He told you about the Hessert
13 issues, correct?

14 MR. WATSON: Objection, Your Honor. He's
15 trying to answer.

16 THE COURT: Overruled. I've heard the
17 answer. He's trying to explain it, but you can come
18 back to it. He answers the question. He goes on.

19 Go ahead.

20 BY MS. LAVAN:

21 Q. I agree with you. He did tell you about the
22 old Hessert affairs, correct?

23 A. No. He just said that he was wrapping things up
24 with his uncle. He didn't go into that he was in
25 litigation with his uncle.

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1 Q. But you never contacted Mr. Hessert to find
2 out while you were vetting Mr. Heenan out about any
3 partnership issues that he had, correct?

4 A. I did not.

5 Q. He says, "I'd like to perfect on the
6 following goals by the year end." Number one is, he
7 says, "Company profile generally complete (website,
8 LinkedIn, et cetera up and uniform.)

9 Two, he says, "Booked backlog with profits
10 exceeding anticipated 2016 G&A expense.

11 And, Three, "Establish a bid schedule for
12 January and pipeline of two to three projects a month
13 for February and March."

14 Then he gives a list; is that correct? Do I
15 have that right?

16 A. That's what he wrote.

17 Q. And then he says, among other things, "I
18 propose the following structure for us as partners,"
19 and he gives a whole host of information there about
20 how to structure this partnership; is that right?

21 A. He was looking for \$1,500 a week, and there were
22 a couple of other profit-sharing ideas. He's talking
23 about partners will be guaranteed salaries of \$100,000.
24 It flip-flops back and forth between partners and I
25 think what he's looking for. It talks about profit

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1 sharing. It talks about a lot of things, but none of
2 them were agreed to.

3 Q. But it took him a lot of time and effort
4 because he's engaging in the partnership idea; is
5 that correct? Would you agree that this proposal
6 probably took quite some time?

7 A. I don't know how long it would take Mark to
8 write an E-mail.

9 Q. Okay. And then if you continue down, he
10 says, "This is just a first stab high level based on
11 my thoughts."

12 And he signs, correct?

13 A. Yes.

14 Q. Did you ever respond back to this E-mail
15 saying anything at all?

16 A. I don't recall seeing a response to it. This
17 actually also states that he's talking about some other
18 company, but for now it's going to be Decus.

19 Q. But he did state: I'd like to explore the
20 partnership in more depth."

21 A. Which we did. We passed some partnership
22 agreements back and forth. We talked about buy-ins and,
23 again, nothing was solidified.

24 Q. Right, and you talked about just what you
25 said, you talked about buy-ins, correct?

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1 A. Correct.

2 Q. You had talked about 20-percent profit,
3 correct?

4 A. Correct.

5 Q. You had also talked about being equal
6 partners, correct?

7 A. With the appropriate buy-in. But, again,
8 nothing got signed so we stuck with the 750 percent,
9 plus 20 percent net profit.

10 Q. Speaking of that agreement, you didn't even
11 pay him what he was due under the consulting
12 agreement, did you?

13 A. We paid him for his time.

14 Q. But you still owe him upwards of \$9,000; is
15 that correct?

16 A. I disagree with that.

17 Q. I'll just show you another Exhibit.

18 MS. LAVAN: Can you pull up Exhibit 53? Go
19 to the very top.

20 BY MS. LAVAN:

21 Q. Do you have it, Mr. Aloia, in front of you?

22 A. Yes.

23 Q. This is the E-mail from Mark Heenan sent on
24 March 11th, 2016 to Thomas Aloia.

25 That's you, correct?

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1 A. There are both. There's an E-mail from me and
2 an E-mail from Mark.

3 Q. Right, but at the very top that's an E-mail
4 from Mark --

5 A. Okay.

6 Q. -- where he's using the Decus Construction
7 logo, correct?

8 A. Correct.

9 MS. LAVAN: Go down a little bit of that.
10 BY MR. WATSON:

11 Q. And then it says it's from Thomas to Mark,
12 Thursday, March 10th; is that correct?

13 A. Yes.

14 Q. And it says, "Mark, see my comments below."
15 And that's from you?

16 A. Correct.

17 Q. Would you agree that below that it says, from
18 Mark Heenan, he writes to you on March 10th,
19 "Thomas." And he says, "Starting, I've attached a
20 revised budget"; is that correct?

21 A. Yes.

22 Q. And would you agree that you then took this
23 E-mail and made comments in the body of the E-mail to
24 respond to what Mark was saying?

25 A. I believe so, yes. I'm trying to decipher which

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1 ones are which.

2 Q. Okay. Also, too, John did the same thing as
3 well? Actually, I apologize, this was just from you.

4 Mr. Aloia, is that a color-coded copy in your
5 binder?

6 THE COURT: 59?

7 MS. LAVAN: 53. Unfortunately, this one is
8 not color coded, so we're going to try to distinguish
9 what are your comments and what Mark said. But I do
10 notice that if you look, some of it is bold and some of
11 it is not. I'm hoping that will help.

12 THE COURT: What exhibit is it, ma'am?

13 MS. LAVAN: Exhibit 53, Your Honor.

14 THE COURT: 53. Okay, thank you.

15 BY MS. LAVAN:

16 Q. So this E-mail says, "Decus Construction will
17 be comprised of three partners, Mark Heenan, John
18 Sciotto and Thomas Aloia," correct, right in the
19 middle there?

20 A. That's what Mark wrote.

21 Q. Below there it says, "Each partner will owe
22 Decus contracts generating a minimum of \$250,000,"
23 so-and-so on. And it says, "If less, the
24 partner-guaranteed distributions shall be reduced
25 accordingly."

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1 And then it looks like, if I understand the
2 structure, it looks to be bold?

3 A. Yes. This is actually an E-mail from Mark to
4 me. Mark says, "Each partner will owe some gross
5 profit."

6 I said, "I understand the structure you're
7 suggesting. However, the structure we discussed was a
8 partnership with a 20 percent to Heenan and the
9 remainder split between myself and John. The
10 partnership should be a collected effort and
11 corresponding bonus structure based upon percentages,
12 quarterly or annually, maybe for project. Truing up
13 bonuses too soon will put the cash flow behind and
14 potentially cripple the company financially.

15 "My initial conversation with John or about
16 having a three-way division of interest. It then became
17 25 percent, and most recently 20 percent. I agree
18 entirely that it should be a collected effort, and don't
19 think the bonus structure should be any more frequent
20 than annual or bi-annual unless we are in a position
21 that that becomes easy."

22 In my mind, that still stays at the 20 percent
23 to Mark.

24 Q. But is it safe to say that it had changed
25 over time? I think you testified that it was

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1 20 percent and then, you know, at one point it was
2 equal, and then at another time he was supposed to
3 buy in, correct?

4 A. Well, it keeps changing, and I know you're
5 characterizing it as I'm changing it. But clearly if
6 you look down the page, I write to Mark. "This doesn't
7 seem like a partnership, rather a bunch of independent
8 sales guys. How do you structure bonuses with various
9 roles? The changes" -- and it goes on further.

10 But the changes aren't coming from me. They
11 are coming from Mark. Then they changed again soon
12 after that and again later on and then reverted back to
13 just a non-equity profit sharing agreement in August.

14 Q. But that's not true, Mr. Aloia, is it,
15 because you didn't originally have anything about a
16 buy-in provision in the beginning when you were
17 discussing the partnership. But in this E-mail, you
18 say --

19 MS. LAVAN: Go down a little bit more.

20 BY MS. LAVAN:

21 Q. Is that bold language, again, your comments
22 to what Mark is saying?

23 A. Yes. "Need to discuss this so I understand
24 where you're going with this." I don't understand it.

25 Q. And you said, "I'm okay with a minimum salary

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1 for you under Decus Construction, and we can create a
2 buy-in structure," correct?

3 A. Correct.

4 Q. So all of a sudden the tables are turning,
5 and you want money from Mark where you didn't
6 originally discuss him buying into Decus Construction
7 at all, did you?

8 A. Our original conversations weren't that he was
9 going to be a partner. At this point, this is the
10 March, I believe, he still is under the February
11 document that we sent him that gets him a 20-percent net
12 profit.

13 Q. But he never signed that document, did he?

14 A. No, we never signed a partnership agreement.
15 These are all negotiations.

16 Q. You know what, Mr. Aloia, isn't it true that
17 now it's convenient for you when you take everything
18 and you make it legal, that your story changes, that
19 all of a sudden it doesn't matter if we have a signed
20 contract, correct?

21 A. I don't think I've taken that stance.

22 Q. But you had a verbal consulting agreement,
23 Mr. Aloia.

24 A. We did.

25 Q. Okay. That wasn't in writing.

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1 A. It was memorialized in writing in February.

2 Q. But he didn't sign it, did he?

3 A. He did not.

4 Q. So you wanted him to act and work under a
5 verbal consulting agreement, correct?

6 A. That was the agreement we agreed to.

7 Q. But he wasn't supposed to act under a verbal
8 partnership agreement, right?

9 A. There was no verbal partnership agreement.

10 There's nothing that shows that there was any
11 partnership or any meeting of the minds for a
12 partnership.

13 Q. "Meeting of the minds" is a legal term,
14 Mr. Aloia, isn't it?

15 A. If you're classifying it as. In my industry, we
16 think of the meeting of the minds as a collective effort
17 and everyone agrees.

18 Q. Well, you know that's not true. You know
19 Mr. Heenan believed he was a partner because you led
20 him to believe that.

21 Let's go on and continue to other E-mails.

22 Would refer to Exhibit 59. This is an
23 E-mail -- are you there yet?

24 MS. LAVAN: Your Honor, do you have it?

25 THE COURT: I have 59, yes.

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1 BY MS. LAVAN:

2 Q. And this one this time is from John Sciutto,
3 sitting right here, and this is sent Sunday, May 1st.

4 It's to Thomas Aloia and Mark Heenan, correct,
5 at the very top?

6 A. Yes.

7 Q. And it says, "Guys, my comments are below as
8 well."

9 If you go down, it says from "Thomas Aloia,"
10 that's you, correct?

11 A. Yes.

12 Q. That's Friday, April 29th, 2016; is that
13 correct?

14 A. That is correct.

15 Q. "To Mark, CC: John Sciutto." It says, "Mark,
16 my comments are below. We can discuss further on
17 Monday at 9 at the coffee shop"; is that right?

18 A. That is correct.

19 Q. If you go down lower, this is the E-mail from
20 Mark dated Friday, April 29th. It says to Thomas,
21 and then this is color coded.

22 Is it safe to say or that your writing is in
23 red, your comments to this E-mail are the ones in red?

24 A. That is correct.

25 Q. And Mark, Mr. Heenan's, they are in black,

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1 correct? Not comments, but his E-mail is in black.

2 A. Correct.

3 Q. And that John's comments are in blue; is that
4 correct?

5 A. That is correct.

6 Q. This is a very long E-mail. On the second
7 page, all the way down next paragraph, right here, do
8 you see that, Mr. Aloia?

9 A. I do, yes.

10 Q. Actually, I apologize. We're going to go up
11 to "I understand." "I understand there is a
12 partnership opportunity with Decus Construction."

13 You say, "I gave you a copy of a partnership
14 agreement months ago. Waiting on your comments"; is
15 that correct?

16 A. "Ball is in your court."

17 Q. Okay. But John, who is your partner, right?

18 A. Yes.

19 Q. Says, "I have been pretty open to this. As
20 we discussed, we would open up a new entity, which
21 Thomas has done."

22 Correct me if I'm wrong, but you did form the
23 new entity that we just discussed as an exhibit that you
24 testified that you did sign, albeit an electronic
25 signature, that's what is being referred to, correct?

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1 A. Which is what I did. I created a new company.

2 Q. That is free of legal issues, lawsuits,
3 Liberty lien on B Town.

4 Is that what it says?

5 A. That is what John wrote, yes.

6 Q. And that new entity was formed because you
7 were afraid that you were going to get sued because
8 of the Brewerytown job because of non-performance,
9 correct?

10 A. That is incorrect.

11 Q. Did you have a dispute?

12 A. We did not. We got paid 100 percent.

13 Q. There was no dispute there?

14 A. There was no dispute with the client.

15 Q. "I have made suggestions to working together.
16 That's coming from John. The proposal presented back
17 was fairly one-sided by Mark. I would like to move
18 forward in an open and equal forum. We need to
19 operate this way or else it's pointless to continue."

20 It goes on to say that. But there's no doubt
21 that the clean entity that John is referring to is the
22 one that you formed that neither John or Mark were
23 partners in. You didn't put their names on the
24 document?

25 A. I would disagree with that. John is a partner

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1 of it, Mark is not.

2 Q. You didn't put John or Mark's name on that
3 legal document that was filed with the State, did
4 you, Mr. Aloia?

5 A. I didn't draft the document. You're
6 mischaracterizing it.

7 Q. You did that for your own benefit, didn't
8 you, Mr. Aloia?

9 A. I did not.

10 Q. This E-mail even further suggests that John
11 believed that this new clean entity was formed for
12 your partnership, right?

13 A. With me. I mean, he clearly says the proposal
14 presented was fairly one-sided by Mark. He doesn't
15 agree with it.

16 Q. Talking about the clean entity that was
17 formed that led Mark to believe that he was part of
18 this new entity that you formed with only your name
19 on it, right, Mr. Aloia?

20 A. There is nothing that states that Mr. Heenan is
21 part of the corporation. What it states is that there
22 is a clean company to work from. It doesn't say Mark is
23 included in it.

24 Q. It says a clean entity.

25 A. It doesn't say Mark is included in it. Nowhere

1 in any of the documentation does it say that Mark is
2 included as a partner. Let me finish.

3 Q. You're absolutely right, Mr. Aloia, you led
4 him to believe that he was a partner in Decus
5 Construction, Inc. for your own benefit while he did
6 all the work, performed on all the jobs and you went
7 and wanted to collect money for work you did not
8 perform.

9 That is the crux of our case, Mr. Aloia. There
10 it is.

11 MR. WATSON: Objection.

12 THE WITNESS: You are incorrect. You have
13 not supplied one document where somebody calls Mark a
14 partner other than himself.

15 BY MS. LAVAN:

16 Q. I have explained document after document, but
17 here's the thing.

18 You want to separate a legal document with an
19 E-mail, correct?

20 A. No, I don't.

21 Q. You're claiming that there should be a signed
22 shareholders agreement, correct?

23 A. There should be a signed shareholders agreement
24 or a letter of understanding, a letter of intent,
25 something signed. There's nothing signed.

1 Q. If you're so concerned about legal entities,
2 John Sciotto was your partner, right?

3 A. Yes.

4 Q. But on that document by the State you didn't
5 even put your own partner's name on it as a
6 shareholder, did you?

7 A. I didn't draft that document. But the signed
8 document that the two of us did put our signatures on to
9 the IRS clearly states we are a 50/50 partnership. We
10 also file our tax returns where we both get K1s for
11 those companies, Decus, Inc. and Decus Construction Inc.

12 Q. But you didn't --

13 A. On those documents it also says 50 percent and
14 50 percent.

15 Q. Did you produce that?

16 A. My tax returns?

17 Q. Yes.

18 A. No.

19 Q. Okay.

20 MS. LAVAN: So go down a little bit
21 further. Go down more. I'm sorry. Go to the red up a
22 little further.

23 BY MS. LAVAN:

24 Q. You stated that just now that you were the
25 one, you authorized somebody else to form that legal

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1 entity and you signed it, but you didn't really
2 review it, correct?

3 A. I did not review it, no.

4 Q. On this E-mail, again, your writing is in
5 red?

6 A. Yes.

7 Q. You say, "We can all discuss on Monday. I
8 wasn't part of your discussions with John early on."

9 That's true, isn't it?

10 A. Yes.

11 Q. Because John was actually the one who was
12 vetting Mark, for the most part, correct?

13 A. I disagree with you.

14 Q. And "I created" -- "I created." Are you "I"?

15 A. I am.

16 Q. "I created Decus Construction to give us."

17 "Us," who is "us"?

18 A. I would assume that's John and I and Mark to
19 work towards an agreement if we can.

20 Q. So "I created Decus Construction Inc.," and
21 that was on November 27th, 2015, correct?

22 A. Correct.

23 Q. Just a few days after you discussed
24 partnership not only verbally but in an E-mail,
25 correct?

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1 A. Correct.

2 Q. And you say, "I created Decus Construction to
3 give us a clean company to work from," right?

4 A. "To work from," yes.

5 Q. What was Mr. Heenan supposed to think time
6 and time again when you're sending these E-mails,
7 you're making him think he's a partner, you're saying
8 you "created a new clean entity for us."

9 He was created to believe from you, Mr. Aloia,
10 that he was a partner, correct?

11 A. No.

12 Q. Regardless of whether or not there was a
13 signed shareholders agreement, you didn't really care
14 about that because you had a verbal consulting
15 agreement. So at the end of the day something being
16 signed, that wasn't really important to you.

17 A. It was important. That's why we finalized the
18 partnership agreements that were never executed.

19 Q. Right, you did finalize it, didn't you,
20 Mr. Aloia?

21 A. We did.

22 Q. And Mark Heenan executed it?

23 A. Mark signed it.

24 Q. Is there a difference between signing and --

25 MR. WATSON: Objection, Your Honor.

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1 THE COURT: Overruled.

2 MR. WATSON: He has to answer the question.

3 THE COURT: No, he did. He said there's a
4 difference between signing and executing.

5 BY MS. LAVAN:

6 Q. Is there a difference between signing a
7 document and executing a document?

8 A. Well, a fully executed document, there is a
9 difference, if only one party signs it.

10 THE COURT: Well, that wasn't the question.
11 Is there a difference between signing and executing it?

12 THE WITNESS: No.

13 MS. LAVAN: Thank you, Your Honor.

14 BY MS. LAVAN:

15 Q. Mr. Heenan did in fact sign that agreement?

16 A. He didn't sign a partnership agreement. He
17 signed a non-equity agreement.

18 Q. You asked him to continue to work with you to
19 become a signed partner even after you claim you
20 found out that Mr. Heenan was stealing money from
21 you?

22 A. We didn't sign anything.

23 Q. You asked Mr. Heenan to continue working with
24 partnership discussions. You were sending drafts
25 back and forth even after you found out, and you

1 claim Mr. Heenan is stealing money from you.

2 A. That's incorrect. We sent him a profit sharing
3 agreement.

4 Q. Okay. A profit sharing agreement.

5 So, again, you are still talking about being a
6 partner with a guy that steals from you?

7 A. Yes, we needed him to come clean with us. We
8 were giving him an opportunity to come clean and to be
9 the guy that he said he was. Unfortunately, I wrote him
10 an E-mail with about 12 items that he needed to take
11 care of, and he didn't take care of them so we
12 terminated any business relationship with him.

13 Q. So you were misleading him to get what you
14 wanted out of the arrangement, which included money,
15 right, Mr. Aloia?

16 A. No, we weren't misleading him. We were clear
17 and concise with 12 points that we wanted him to take
18 care of.

19 Q. But that was after. Those 12 points were
20 after, and before you had been going back and forth
21 and continuing partnership discussions with him?

22 A. No, that was after we found out that he had
23 created a dba of our business and was collecting checks
24 from clients that we believed were our clients on
25 projects that we worked on, and we found out that he

1 high-jacked our website, created another domain name
2 virtually the same as ours, changed bidding documents
3 and put his personal information on it, used our mark
4 throughout the commerce, and what else did we find?

5 Q. I don't know, Mr. Aloia, wasn't that your
6 claim after you hired legal counsel?

7 A. No. After our August 26th meeting, we started
8 to find stuff out. It wasn't until after we hired
9 counsel that we had a better understanding of what was
10 going on.

11 Q. But after your August 26th meeting, you were
12 still talking about partnership arrangements with Mr.
13 Heenan --

14 A. Profit sharing.

15 Q. Profit sharing, right? You were still
16 talking to Mr. Heenan about profit sharing --

17 A. We were.

18 Q. -- correct?

19 A. Yes.

20 Q. And this was after you said you found out
21 that he was stealing money from your clients, your
22 clients, and that he was cloning your website,
23 correct?

24 A. Correct.

25 Q. And that was even after you found out that he

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1 was using the logo, correct?

2 A. Well, the logo we didn't find out until we got
3 into his E-mails.

4 Q. So one thing missing. You found out he was
5 stealing from you, but you still continued to talk
6 about partnership with him.

7 A. Profit sharing. Our original agreement. Our
8 original agreement.

9 Q. So you explain, please, if it was so
10 important to you and you so believed that Mr. Heenan
11 was stealing money from you, why did you want him as
12 a partner or as a profit sharing member, anything at
13 all, at that point?

14 A. Well, at that point we had relied on him for
15 almost a year for our business moving forward. We put a
16 lot of trust in him to get us business moving forward.
17 When we parted ways with him, we lost a backlog of work,
18 which put a void in our projects. So we did want it to
19 work. We wanted it to work. We had employees that
20 relied on us. We wanted to continue working.

21 Q. You relied on him those last eight months to
22 do your job, to go out and get projects and get new
23 clients, didn't you, Mr. Aloia?

24 A. It wasn't my job, but we relied on him for
25 bringing in business, business development.

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1 Q. Let me guess, Mr. Heenan, with his extensive
2 background agreed to do this for you for \$750 a week
3 consulting agreement while, though -- that's a lot of
4 money, correct me if I'm wrong, correct? \$750 a
5 week, that's a good amount of money, right?

6 MR. WATSON: Objection.

7 THE COURT: Objection sustained.

8 BY MS. LAVAN:

9 Q. But he was also working at Brewerytown, doing
10 the estimates, on site. He was doing all that work
11 and getting paid \$750 a week to do that work,
12 correct?

13 A. He wasn't doing anything at Brewerytown.
14 Actually, he didn't complete one task at Brewerytown.
15 He started with the BMI system, which he never did. We
16 actually had interns finish that work. He was to do a
17 schedule that he never completed.

18 John and I both drafted schedules to get to the
19 client, because we couldn't find mark. He was, I guess,
20 off the grid at that point. So his work at Brewerytown
21 was very limited. It may have been only limited to
22 maybe two weeks, but since John was there daily he could
23 probably speak more about that.

24 Q. Before I go through all these documents, do
25 you agree that you had sent Mr. Heenan the logo to

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1 use for Decus business?

2 A. I did, yes.

3 MS. LAVAN: I want to bring up Exhibit 74,
4 please.

5 BY MS. LAVAN:

6 Q. This is an E-mail from you, Thomas -- do you
7 have the Exhibit in front of you, 74?

8 A. Yes.

9 Q. Wednesday, August 3rd, and it's to
10 Mark Heenan and John Sciotto, correct?

11 A. Correct.

12 Q. It says, "Mark, wanted to follow-up on some
13 general housekeeping." And it's in black text.

14 Are those your comments or your language in the
15 E-mail, the black text?

16 A. Yes.

17 Q. It says, "John and I have reviewed your
18 changes. The majority of the minor changes are
19 acceptable. We should sit down and discuss a final
20 draft and execute to close the matter. Below is a
21 quick calculation of shares and equity.

22 Alternatively, I sent you an agreement that we could
23 use in the interim if you need more time."

24 Whose writing is in blue?

25 A. I believe that's Mark's.

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1 Q. He says, "I don't need more time. The draft
2 shareholders agreement has been in your hands for
3 almost two months without a response. Please send
4 over any proposed edits and/or comments. It will
5 also need to be updated."

6 This here is your text in black, correct?

7 A. Correct.

8 Q. It lists the total shares, which we know
9 there were 200 total shares, because that's what the
10 legal document states, right?

11 A. Correct.

12 Q. It gives the shares, it gives the equity and
13 it gives the split.

14 What is the split for? Is that profit?

15 A. No, it's the shares. So there's 200 total
16 shares. The split would be 67, 67 and 66 on the shares.

17 Q. Below it says that total investment here, but
18 it does say anywhere here anything about a 20-percent
19 profit sharing?

20 A. In those numbers, no. It says it in the body of
21 the text. It says, "Alternatively, I would send you an
22 agreement that you can use in the interim, which is the
23 20 percent. If we can't agree on these terms, then
24 we'll keep going with the 20 percent."

25 Q. But one of the agreements that you sent in

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1 February also was a shareholders agreement where you
2 had the equity of 50 percent for each party, correct?

3 A. No, that's not correct. It was 50/50. We only
4 showed two people or two spots for people. It didn't
5 show three. It was a boilerplate document, and I
6 believe that actually was sent in April, if I'm thinking
7 of the one I'm referring to.

8 Q. Mark sent you a shareholders agreement with
9 50/50 equity on it split. I'm sorry, equally among
10 the parties; is that correct?

11 A. Fifty --

12 Q. It was equal between the parties, 33, 33 and
13 33. You, John and Mark, correct?

14 A. I can't agree to anything I don't have in front
15 of me.

16 Q. We'll find it.

17 MS. LAVAN: August 26th, Exhibit 84. Go to
18 62. We're going to go back to 62. I apologize. At the
19 very back of that is an E-mail.

20 BY MS. LAVAN:

21 Q. This is from Mark Heenan on May 23rd, and it
22 says, "Subject and attachments are shareholders
23 agreement. MH comments preliminary document.
Initial comments. He attaches --

25 MS. LAVAN: Go up to the top.

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1 BY MS. LAVAN:

2 Q. He attaches the shareholders agreement,
3 correct?

4 A. Correct.

5 Q. In your experience, a shareholders agreement
6 is different than a profit sharing agreement; is that
7 correct?

8 A. They can be one and the same if they are drafted
9 properly.

10 Q. Isn't it true that as a profit-sharing
11 venture, that you are not technically partners,
12 correct?

13 A. It depends on how it's drafted.

14 Q. Most of the time, though, you're just sharing
15 in the profits?

16 A. If it's solely profits and net profits and
17 there's no ownership, yes.

18 Q. It's also your testimony that you weren't
19 offering any ownership in the shares originally to
20 Mr. Heenan, correct?

21 A. Originally, back in November, no, we weren't
22 offering him shares.

23 Q. A shareholders's agreement is something where
24 you actually do give shares to the partners, correct?

25 A. Correct.

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1 Q. Part of that is that you typically share in
2 the revenue based upon the shares that you have; is
3 that correct?

4 A. That's correct.

5 Q. This is the agreement -- well, that Mark sent
6 to you, correct?

7 A. On May 23rd, yes.

8 Q. Eventually, this is the agreement that
9 Mark Heenan executed; is that correct?

10 A. All red lined like this, I don't know.

11 Q. It was finalized. Thank you.

12 A. The agreement that looks like, I believe, Mark
13 signed has a buy-in, and he was to have a check with
14 that agreement. I can't say this is a clean copy.

15 Q. This is not a clean copy, but this is a
16 shareholders agreement.

17 A. That is a red-line shareholders agreement, yes.

18 Q. Is it safe to say that Mr. Heenan was under
19 the impression that not only was he a partner, but
20 that he was also a shareholder in Decus, Inc. and was
21 going to be a partner and he was working out the
22 shareholder's agreement.

23 Wasn't he led to believe that based on this
24 document going back and forth between you, him and John
25 Sciotto?

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1 A. I think this was a negotiation to become a
2 shareholding partner.

3 Q. Right, just as though it was a negotiation
4 that you only wanted him to receive 20 percent of the
5 revenue, correct?

6 A. That was agreed to. I don't believe that was a
7 negotiation. That was a negotiation that --

8 Q. Where did Mr. Heenan agree to that?

9 A. I think he invoiced us for the 750.

10 Q. That was for the consulting agreement,
11 correct?

12 A. Right.

13 Q. But not the profit sharing agreement, right?

14 A. Yes. We weren't receiving the money for
15 20 percent, so I don't think he would invoice us for
16 that.

17 Q. The 750 was a salary for him consulting.

18 It had nothing to do with profit sharing,
19 right, Mr. Aloia?

20 A. It was a minimum salary, yes.

21 Q. Eighty-four. This is from you, Thomas Aloia,
22 dated Friday, August 26th, 2016 at 1:38, correct --

23 A. Correct.

24 Q. -- to John Sciotto and Mark Heenan?

25 A. Correct.

1 Q. And if you go down it says, "Mark, it was
2 extremely disappointing to find out that you have
3 been conducting business behind our backs."

4 You do go through all that, correct?

5 A. Correct.

6 Q. During this time frame, this was after you
7 found out Mark allegedly had stolen money from you,
8 correct?

9 A. Correct.

10 MS. LAVAN: If you go down a little bit
11 more.

12 BY MS. LAVAN:

13 Q. You say in Number 9, "Limited partnership
14 agreement with Mark" --

15 MS. LAVAN: I'm sorry, go a little bit
16 above that in 8 -- 9.

17 BY MS. LAVAN:

18 Q. -- "limited partnership agreement with
19 Mark Heenan," correct?

20 A. Correct.

21 Q. "Full equity shares at execution of pledged
22 contracts and receipt of payments will include the
23 following: A, base salary, proposed 1,000 a week,"
24 right? Different than 750, correct?

25 A. Correct.

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1 Q. "B, percentage of profits, sliding scale
2 based upon agreed pro forma with a full 33-percent
3 share at equity partner status."

4 An equity partner status to you and to the
5 legal term of that is equity is somebody who actually
6 has equity in the ownership of the business; is that
7 correct?

8 A. Correct.

9 Q. And that's a shareholder, correct?

10 A. Correct.

11 Q. So here, on August 26th, you were still
12 proposing that Mark be an equal shareholder at
13 33 percent, correct?

14 A. Not at that time. If you read the E-mail in its
15 entirety, it's a limited partnership agreement. And if
16 you start, "However" -- in the top of it, "However, in
17 an attempt to avoid litigation and criminal prosecution,
18 John and I are amenable to the following proposal, which
19 was discussed at our earlier meeting," and it lists ten
20 items.

21 Number 9 is a limited partnership with
22 Mark Heenan. "Full equity shares at execution of
23 pledged contracts and receipt of payments."

24 He wasn't getting anything until we got our
25 money back, and he wasn't getting anything until we had

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1 the contracts. It was stipulated with four different
2 items that he needed just for that limited partnership
3 on top of the other nine items that needed to have
4 happen. One of them was a non-compete, and the first
5 line item was full transparencies.

6 Q. Mr. Aloia, do you understand why these terms
7 have changed? I mean, I can keep going through
8 E-mails, but you have changed the terms time and time
9 again. Even after you found out he was stealing from
10 you, you still offered him 33 percent with equity.

11 A. I changed the terms.

12 Q. You're a smart guy, Mr. Aloia, aren't you?

13 THE COURT: Is there a question?

14 BY MS. LAVAN:

15 Q. You know what I'm referring to.

16 MR. WATSON: Objection.

17 THE COURT: No, no, we need a question.

18 Plenty of time to make an argument to the jury. Do you
19 have a question?

20 BY MS. LAVAN:

21 Q. Just because I can't get you to agree that
22 you keep changing these terms and we have to keep
23 going, we have to keep going.

24 MS. LAVAN: So keep going down. At the top
25 actually, go to the top.

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1 BY MS. LAVAN:

2 Q. This is August 26th, right?

3 A. Yes.

4 Q. This was the Café incident; is that right?

5 A. Correct.

6 Q. You claim you didn't threaten Mr. Heenan,
7 right?

8 A. I didn't.

9 Q. Well, that's funny because on August 26th,
10 this says, "Mark, it was extremely disappointing to
11 find out that you have been conducting business
12 behind our backs under our legal trade name.
13 However, in an attempt to avoid litigation and
14 criminal prosecution, criminal prosecution John and I
15 are amenable to the following proposal."

16 In other words, Mr. Aloia, you threatened him,
17 tried to coerce him that if he didn't pay you, you were
18 going to file litigation and criminal prosecution
19 against him to the extent that you even went so far
20 after you threatened him, you're going to give him
21 33 percent of the business.

22 A. We weren't giving him 33 percent on that. If he
23 met all of our terms, we would give him 33 percent.

24 Q. If he met all those terms after you
25 threatened to file criminal prosecution against him.

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1 A. No, it was to avoid what he had just admitted to
2 us.

3 Q. It's your testimony you didn't threaten him,
4 right, Mr. Aloia, at the Café that day?

5 A. I wouldn't take that as a threat under the
6 circumstances. Under the circumstances, Mr. Heenan had
7 identified that he was a criminal. The only option we
8 had was litigation. We wanted to avoid that. If he was
9 coming clean and he admitted this finally, it was a step
10 towards the right direction. Maybe we can get back on
11 track if he can meet ten items.

12 Q. If he would pay you money, that was what you
13 wanted from him?

14 A. Stolen money, correct.

15 Q. Part of that conversation, on August 26th,
16 where you threatened to file criminal prosecution
17 against him, you also threatened to file and display
18 a website with Mr. Heenan's picture on it, correct?

19 A. I did not.

20 Q. But at that point you were well aware of what
21 was going on between him and Mr. Hessert; is that
22 correct?

23 A. No.

24 MS. LAVAN: Your Honor, may I just have a
25 moment, please?

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THE COURT: Certainly.

2 BY MS. LAVAN:

3 Q. Continuing on with Exhibit 84, which is this
4 one, not only did you demand and threaten him with
5 criminal prosecution, you asked for a whole bunch of
6 other things and then -- correct?

7 A. Yes, I asked ten items.

8 Q. Ten items. "The first one is full
9 transparencies of the business dealings while working
10 with John and I for the past ten months. We
11 understand you may have other business relationships
12 and other sources of income. However, we want to see
13 the paper trail of those projects."

14 A. "The projects."

15 Q. "The projects and contracts that we have been
16 discussing as a team for the past six to ten months,"
17 correct?

18 A. Correct.

19 Q. You say "Two, immediately cease any and all
20 business transactions under Heenan Holdings LLC doing
21 business as Decus Construction."

22 A. Correct.

23 Q. You were aware that Mr. Heenan was still
24 operating under Decus Holdings LLC at that time,
25 correct?

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1 A. Yes.

2 Q. And you were still operating your own
3 business by the name of Abcon, correct?

4 A. That's in correct. The business that I operated
5 is known as Arris.

6 Q. You did have an ownership in Abcon, correct?

7 A. Many, many years ago.

8 Q. But you sold it to your wife?

9 A. I sold it to my partner, a gentleman by the name
10 of Steven Burke, and I went to go and work for another
11 construction company in North Jersey, and then my wife
12 bought it back when he wanted to go and do Steven Burke
13 Contracting.

14 Q. You didn't buy it back, though, did you?

15 A. I did not.

16 Q. Because you couldn't, correct?

17 A. I could have.

18 Q. You couldn't because it was a bankruptcy
19 issue.

20 You couldn't buy that entity back; is that
21 correct, Mr. Aloia?

22 A. That's incorrect. The day after the filing of a
23 bankruptcy I could have done anything I wanted to.

24 Q. But you had your wife buy it?

25 A. I believe in 2015 she did.

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1 Q. You say, "Proof of dissolution of Heenan
2 Holdings, dba Decus Construction."

3 Mr. Heenan did do that, correct?

4 A. He did do it, yes.

5 Q. So as soon as you took issue with the fact
6 that he was using Heenan Holdings and the LLC and the
7 dba Decus Construction, he ceased doing it, correct?

8 A. I don't know to what extent. He still had
9 probably bank accounts. We never saw any documents,
10 with the exception of an E-mail he sent us that he
11 stated that he dissolved it and had a confirmation from
12 the State of New Jersey. But we never got the
13 documentation from him.

14 Q. The documentation also included checks that
15 he received, which were on the screen previously,
16 correct, that your attorney had showed to you?

17 A. No. Those were checks that he whited out.

18 Q. But he did tell you that he was going to
19 redact those signatures in that E-mail to you,
20 correct?

21 A. Actually, if you look at those checks, those six
22 or seven checks, those were well into October, November
23 and I believe the last one was in December. So he was
24 still operating somehow under Decus Construction. They
25 didn't change to Heenan Holdings. I believe they stayed

1 under Decus Construction.

2 Q. That's your understanding, correct? But the
3 contract said Heenan Holdings.

4 A. Heenan Holdings dba Decus Construction.

5 Q. Some of them just said Heenan Holdings,
6 correct?

7 A. Some of what?

8 Q. Some of those contacts.

9 A. No, both of them he put as Heenan Holdings dba
10 Decus Construction.

11 Q. You were well aware that he was operating
12 Heenan Holdings?

13 A. At this point, we were well aware he was
14 operating Heenan Holdings dba Decus Construction, which
15 is part of Heenan Holdings. So, yes.

16 Q. You were demanding even more. You were
17 demanding a copy of all bank statements and deposits
18 into your accounts and you kept on making demands
19 amongst him, correct?

20 A. There was a list of ten items. If he wanted to
21 move forward with us, those were what we wanted him to
22 do.

23 Q. It was after that all these demands where you
24 had all this knowledge allegedly, that you still
25 continued to discuss partnership with him?

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1 A. From this E-mail, yes.

2 MS. LAVAN: That's all I have, Your Honor.

3 THE COURT: All right, ladies and
4 gentlemen, before we -- well, let me ask Mr. Watson,
5 just to be clear.

6 I suspect you're going to have redirect of this
7 witness?

8 MR. WATSON: Maybe 45 minutes.

9 THE COURT: Okay. Let's do that, ladies
10 and gentlemen. Let's enjoy our lunch so he can prepare
11 and streamline his questioning. We'll take a break now
12 until 1:00 p.m. We'll start then. The witness will
13 remain on the stand, and then we'll have him on
14 redirect.

15 Thank you very much.

16 (The jury exited the courtroom at 12:15 p.m.,
17 at which time a luncheon recess was held.)

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	33/25 35/5 38/18 38/24 39/2 39/8 39/20 39/22 40/2 40/9 41/11 41/15 42/7 42/10 48/3 53/3 53/19 53/23 56/1 56/5 56/23 57/10 58/6 58/17 60/25 61/3 61/7 61/10 61/17 67/12 70/6 70/14 71/8 71/10 71/22 72/4 72/10 72/13 72/16 72/22 86/24 87/2 87/19 92/21 93/14 93/17 93/20 94/10 94/13 95/15 100/5 100/11 100/13 104/24 112/25 113/2 113/9 117/6 126/12 126/16 128/25 133/2 133/8	\$5 million [3] 78/10 \$5.2 [2] 79/8 79/23 \$5.2 million [2] \$680,000 [1] 32/1 \$7,058 [2] 8/22 23/9 \$750 [3] 117/2 117/4 117/11 \$8,023 [2] 23/2 23/11 \$9,000 [1] 98/14 \$965 [1] 10/7 .br/> '16 [3] 9/16 34/25 35/1 0 08057 [1] 1/21 1 1,000 [1] 124/23 1-31-16 [1] 9/11 1.1 million [1] 75/19 1.19 million [1] 31/9 1.5 million [1] 31/13 10,000 [1] 3/24 100 percent [2] 36/23 107/12 106 [6] 18/15 18/16 18/17 18/18 18/19 18/24 10:30 [2] 70/14 71/2 10:50 a.m [2] 71/4 72/22 10th [2] 99/12 99/18 11-22-2005 [1] 89/17 11-27-2005 [1] 89/20 11-27-2015 [1] 89/12 1145 [1] 24/21 1150 [1] 24/22 11th [2] 9/18 98/24 27/23 28/9 28/11 28/13 \$4,486 [2] 31/21 40/13 \$4,486 million [2] 31/21 40/13 \$401,000 [2] 31/6 38/9 \$5 [3] 78/10 78/14 79/2	59/13 1324 [3] 19/23 20/2 20/4 1325 [1] 20/3 134 [1] 58/4 134,570 [1] 37/17 15 [2] 10/15 70/8 1511 [1] 1/25 16 [5] 9/11 9/14 10/7 10/8 25/9 16-CV-5849 [1] 1/7 187 [1] 58/2 187,000 [2] 37/19 37/20 18th [2] 15/13 15/14 19106 [1] 1/25 19422 [1] 1/17 19th [2] 19/1 19/4 1:00 p.m [1] 133/12 1:38 [1] 123/22 1st [1] 105/3 2 2,200 [1] 16/18 20 [3] 30/16 61/22 73/2 20 percent [18] 38/13 39/17 40/21 40/22 40/24 40/25 85/2 85/4 86/12 98/9 101/8 101/17 101/22 102/1 119/23 119/24 123/4 123/15 20-percent [4] 85/13 98/2 103/11 119/18 200 [3] 1/16 119/9 119/15 2005 [2] 89/17 89/20 2011 [1] 27/15 2013 [1] 42/15 2015 [9] 42/18 44/24 88/8 89/12 91/3 91/21 93/3 111/21 130/25 2016 [15] 9/4 11/18 12/23 15/14 19/1 22/2 22/3 24/20 26/23 27/7 33/24 96/10 98/24 105/12 123/22 2018 [1] 1/11 215 [1] 1/25 22 [1] 11/10 23rd [2] 120/21 122/7 24th [1] 93/3 25 [2] 80/4 80/6 25 percent [1] 101/17	26 [2] 1/11 80/7 26th [12] 19/17 25/2 25/10 38/5 115/7 115/11 120/17 123/22 125/11 127/2 127/9 128/15 27 [3] 75/9 92/15 92/21 271 [1] 1/20 27th [4] 88/8 91/21 93/10 111/21 29 [2] 25/12 40/22 29th [4] 24/19 27/7 105/12 105/20 2nd [2] 11/18 12/23 3 3-30-16 [1] 10/7 31st [1] 9/4 33 [3] 120/12 120/12 120/13 33 percent [5] 125/13 126/10 127/21 127/22 127/23 33-percent [1] 125/2 38 [1] 20/21 3rd [1] 118/9 4 4-8-16 [1] 9/14 4.86 [1] 40/22 40 [3] 20/22 21/2 64/12 41 [3] 7/25 8/2 9/22 45 [1] 133/8 450 [1] 1/16 460-1511 [1] 1/25 5 5.2 million [1] 79/5 50 [3] 110/9 120/3 120/9 50 percent [3] 110/13 110/14 120/2 50,000 [1] 31/19 50/50 [3] 110/9 120/3 120/9 504 [1] 30/17 53 [6] 37/19 38/4 98/18 100/7 100/13 100/14 56 [2] 9/21 10/4 5849 [1] 1/7 59 [3] 100/6 104/22 104/25 6 6 million [1] 30/12 6-1-16 [1] 10/8 60-day [1] 16/17
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